



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 817 OF 2024

Vishwas Yeshwantrao Navalkar and Ors.

... Appellants.

Versus

State of Maharashtra and Ors.

... Respondents.

Mr. Vikas Murudkar, for the Appellants.

Mr. A.R.Patil, AGP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : August 12, 2024

P. C. :

1. Being aggrieved by the judgment dated 18th December, 2021 passed by the Civil Court in S.C. Suit No.6988 of 2006 dismissing the suit, the original Plaintiff is before this Court. For the sake of convenience, the parties are referred to by their original status before the Trial Court.

2. The facts of the case are that the S.C. Suit No.6988 of 2006 was instituted by the Plaintiff seeking the following relief:

“(a) It be declared by this Hon'ble Court that the construction work started on the suit plot bearing CTS No.1/404, Plot of land situated at 63, Tardeo Road, Tardeo Division, known as Dadarkar Estate Compound adm. 11,263.56 sq. mtrs; which property is more particularly described in the Schedule annexed herewith as Exhibit 'A' on the basis of the Lease Deed executed between the Defendant No.4 to 10 as well as

the construction work started on the basis of permission dated 07.10.1978 bearing No.C/ULC/SR-XXVII/6845 and/or any amendment thereto granted by the Defendant No.2 be cancelled and the same may be revoked being illegal and void transaction took place between Defendant Nos. 4 to 10.

- (b) Pending the hearing and final disposal of the suit, the Defendant No.2 be ordered and directed to revoke/suspend the orders granting permission to construct the buildings which are at present under construction on the suit property more particularly described in Exhibit 'A' hereto.*
- (c) Pending the hearing and final disposal of the suit, the Defendant No.3 be ordered and directed to revoke and/or cancel the plans sanctioned and/or amended by the Defendant No.3 in respect of the buildings which at present are under construction on the said suit property more particularly described in Exhibit 'A' hereto.*
- (d) Pending the hearing and final disposal of the suit, the Defendant No.4 to 6 be restrained by an order of injunction of this Hon'ble Court from undertaking/ proceeding further with the construction of new building work on the said suit property more particularly described in the Exhibit 'A' hereto."*

3. The case of the Plaintiff was that the suit property was originally owned by one Benabai Mukundrao Dadarkar who expired on 8th August, 1959 and had executed a Will dated 15th May, 1956 bequeathing the property in favour of her three sons i.e. Dattaram alias Dattatray, Jaywantrao and Vasantrao in equal proportions. The executors appointed under the Will dated 15th May, 1956 were granted probate on 17th July, 1961 by this Court. Subsequently, in the year 1977, Dattatray expired and on 8th September, 1986, Jaywantrao

expired. Both Dattatray and Jaywantrao were unmarried and died intestate. Vasantrao had legal heirs, who are impleaded as the Defendants in the suit. The case of the Plaintiff was that a lease was executed by Jaywantrao and Vasantrao in favour of the Chief Promoter of Jaywant Co-operative Housing Society devising the property for term of 98 years. The plaintiff's case was that being the sister of the deceased Dattatrya and Jaywantrao, she was entitled to a share in the property as Dattatray and Jaywantrao had expired intestate. The Plaintiff had filed Suit No.4538 of 1994 praying for letters of administration in respect of the property of the deceased which was dismissed as against which the Appeal is pending. Based on the said fact and claiming right in the property the suit came to be filed.

4. The Defendant Nos.1 and 2 filed their written statement stating that the permission granted by the Defendant Nos.1 and 2 in the year 1978 to the Defendant Nos.4 to 10 is already acted upon and hence the suit has become infructuous. They have also questioned the locus of the Plaintiff to institute the present suit and also objected on the ground of limitation.

5. The Defendant No.5-Jaywant Co-operative Housing Society filed its written statement raising the issue of limitation stating that in the

earlier suit filed for letter of administration, the interim relief was rejected. It was stated that the property belongs to Defendant No.5 under two agreements of the year 1981 and 1985. The property was transferred by the lease-deed executed by Jaywantrao and Vasantryao on 8th May, 1980. Pursuant thereto, the Corporation has granted permission for development of the suit property and subsequently the Defendants started construction in the suit property. The tenements were constructed and the Plaintiff was aware of the construction going on on the said property but did not challenge during the period of limitation.

6. The suit also came to be resisted by the Defendant No.6 contending that there is no challenge to the lease-deed dated 8th May, 1980 executed by Jaywantrao and Vasantryao in favour of the Defendant No.4 and that the Defendant No.4 has expired and the legal heirs were not brought on record. It was contended that the suit is barred by limitation. The Defendant Nos.7A and 7B admitted the written statement filed by the Defendant Nos.8 and 9, that they are the legal heirs of the deceased-Jaywantrao and Vasantryao. It was stated that the Plaintiff had no share in the property of the deceased brother. The suit was objected on the ground of being barred by limitation.

7. The parties led evidence. Trial Court on the appreciation of evidence held that the Competent Authority had held that Ramabai i.e. the Plaintiff is having no share and interest in the suit property and that she does not have locus to challenge the same. The Trial Court further held that the NOC given by the Municipal Corporation has not been challenged by the Plaintiff. The Trial Court further held that no notice under Section 80 of the CPC is issued to Defendant no.1 and 2 prior to the institution of the suit. As regards limitation, the Trial Court held that in the year 1994, when the suit was filed before this Court, the Plaintiff was aware of the lease-deed as well as the development agreement executed by the Defendant Nos.4 and 5 and no relief was sought within a period of three years from the date of knowledge and held that the suit is barred by limitation.

8. Heard Mr.Murudkar, learned counsel for the Appellant and Mr.Patil, learned AGP for the Respondent-State.

9. Mr.Murudkar, learned counsel appearing for the Plaintiff would advance only two submissions, firstly, that the suit could not have been dismissed as the Plaintiff had applied for letter of administration of the suit property which suit was dismissed and the Appeal filed by the Plaintiff is pending before this Court and, secondly, that in the cross-examination of the Defendant No.2-Corporation, the witnesses

admitted that the office of MMC does not have the file consisting of permission granted by the Collector dated 7th October, 1978.

10. Considered the submissions and perused the records.

11. Notably in the said suit, there is no relief sought as regards the declaration of the right, title and interest of the Plaintiff in the suit property and the suit is filed in the year 2006 challenging the construction permission which has been given on 7th October, 1978 by the Additional Collector and Competent Authority. The Plaintiff claims to have a share in the suit property through her two brothers i.e. Dattatray and Vasantrao who had died intestate and were unmarried at the time of their death and being the sister, she has a right, title and interest in the property. Admittedly, under the Will executed by Benabai i.e. her mother, the property was bequeathed to her three sons i.e. Dattatray, Vasantrao and Jaywantrao. The present suit has been filed restricting the challenge only to the permission dated 7th October, 1978 which was granted by the Collector for the development of the suit property. There is no declaration of ownership which is sought in the present suit and the only challenge is to the development and the construction permission.

12. The case of the Plaintiff is that the development agreement

dated 2nd November, 1981 was invalid. The fact remains that Vasantryao and Jaywantrao had executed a lease-deed as well as a power of attorney in favour of Defendant No.4. There is no challenge either to the development agreement or the lease-deed which was executed in favour of the Defendant No.4. Even if it is accepted that the Plaintiff has right in the property as the legal heir of the deceased Dattatray and Jaywantrao, it was necessary firstly to seek an appropriate declaration as regards the right, title and interest of the Plaintiff in the suit property and secondly to challenge the development permission as well as the lease-deed executed by Vasantryao and Jaywantrao in favour of the Defendant No.4. It is only upon such substantial relief being granted that any challenge would lie to the permission dated 7th October, 1978 granted by the Defendant No.2. It is well settled that the proceedings seeking letter of administration for administration of the estate does not deal with the right, title and interest of the parties in the property and for that the appropriate remedy is to file a substantive suit seeking declaration of right, title and interest which has not been done in the present case.

13. The other factor which assumes importance is that the permission of the year 1978 has been challenged by filing a suit in the

year 2006. It is not disputed that in the year 1994 when the Application was made for letters of administration, the Plaintiff was aware of the permission which was granted and despite thereof had failed to file the suit within the limitation of three years.

14. The Trial Court on the basis of the evidence has rightly held that the suit is barred by limitation, as firstly, no relief has been sought in respect of the development agreement as well as the lease-deed and secondly, that there is no challenge to the same within the prescribed period of limitation. The permission dated 7th October, 1978 is sought to be challenged on the ground that the same is illegal and void transaction. For the purpose of seeking any relief in respect of the permission being illegal and void, it was necessary first to conclusively establish the right, title and interest of the Plaintiff in the suit property and to challenge the development agreement and the lease-deed which has not been done in the present case.

15. In light of the above, merely relying upon the cross-examination of the witness of the Corporation that the Corporation does not have the file consisting the permission granted by the Collector dated 7th October, 1978 does not assist the case of the Plaintiff.

16. In view of the discussion above, there is no merits in the Appeal,

Appeal stands dismissed.

17. In view of the disposal of the Appeal, Civil/Interim Applications, if any, taken out in this Appeal, does not survive and same is disposed of.

[Sharmila U. Deshmukh, J.]