



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Second Appeal No. 273 of 2015

[Gulab Karnuji Bele ..vs.. Sumitra W/o Shankar Bele and ors.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. H. Lohiya, Advocate for the appellant
Mrs. S. P. Giratkar, Advocate for respondent nos. 1 to 8
None for respondent nos. 9(A to D) and 10(A to E)

CORAM : ANIL L. PANSARE J.

DATED : 2-12-2024

Heard.

2. The appeal has been admitted on following substantial question of law.

Whether the lower Appellate Court was right in dismissing the suit as barred by the law of limitation ?

3. The petitioner – plaintiff had filed a suit being Special Civil Suit No. 178/1994 seeking declaration that he is owner of Plot No. 96 admeasuring 1002.5 sq.ft. and house constructed thereon situated at Jatpura Ward No. 1, Nagar Parishad, Civil Ward, Chandrapur. According to the petitioner, the plot was purchased by one Fakira, the petitioner's uncle. The petitioner averred in the complaint that Fakira and his wife Rukhmabai had treated the petitioner as their son. The pleadings in the plaint further indicate that though the plot was purchased by Fakira, he and his brother, namely, Karnuji were in possession. Fakira and his wife expired. The petitioner claimed that the property was bequeathed to

him by Will executed by Fakira's wife and has thus became owner of the suit plot.

4. The respondents are descendants of Karnuji Bele, the brother of Fakira. Initially, Karnuji and after his death, his legal representatives refused to handover possession of the suit plot to the petitioner's predecessor and also to the petitioner. Accordingly, the suit came to be filed on the ground that cause of action arose lastly on 8-8-1994 when despite notice given to the respondents, they failed to give possession of the suit property.

5. The respondents denied the theory put forth by the petitioner. According to them, Karnuji is also owner of the property and has constructed one hall towards North side. The respondents averred that Fakira and Karnuji were living together and formed a joint Hindu family. The property though purchased in the name of Fakira, the money was given by Karnuji. Later on, Fakira got separated and started residing in rented house. Karnuji and his family were residing in the suit house since the year 1940 and accordingly contested the suit.

6. In context with above, the issue of limitation will have to be considered. Both the Courts below held that the suit is barred by limitation. The trial Court held that the suit has been filed on 21-11-1994. The pleadings and evidence show that Rukhmabai executed Will on 29-10-1979 and the plaintiff became owner after death of Rukhmabai, which occurred on 26-10-1980. The petitioner, by way of amendment, brought on record that he came to know about Will sometimes in 1988, when he

received one registered envelop containing the original registered Will. The trial Court held that if the petitioner acquired knowledge of Will in the year 1988, cause of action arose on that day itself for filing suit for declaration of ownership. The suit was, however, filed in the year 1994 and, therefore, the trial Court held that the suit is barred by limitation.

7. So far as possession is concerned, the pleadings in the suit indicate that Fakira died on or about 14-5-1972. The petitioner and Fakira's wife Rukhmabai in the year 1979 met Karnuji, who straightaway refused to give possession of the suit property. The trial Court, by taking recourse to Article 65 of the Limitation Act, 1963, held that the suit ought to have been filed within 12 years from the date of refusal to handover the possession. Rukhmabai in her lifetime did not file suit for possession.

8. On the point of cause to file suit for declaration, the trial Court noted that, the petitioner was present with Rukhmabai when they sought possession of the suit plot in the year 1979. Thus, the petitioner was aware since the year 1979 that Karnuji and after his death, the respondents had refused to handover the possession. With such facts, the moment, the petitioner acquired knowledge in the year 1988 of the Will having been executed in his favour, he ought to have filed suit seeking declaration of ownership in as much as the respondents refused to handover possession of the suit plot even after 1988, which to my mind amounts to challenge to the ownership of the petitioner over the suit plot. The record further indicates that the petitioner made an

attempt to mutate his name which was contested by the respondents.

9. Thus, the petitioner was fully aware that his title over the suit plot was denied by the respondents during the lifetime of Fakira and after his death, Rukhmabai and after her death, the petitioner himself.

10. In the circumstances, the findings of the trial Court that cause of action, on the basis of pleadings in the suit arose in the year 1988, if not earlier and, therefore, suit for declaration of ownership ought to have been filed within 3 years thereafter i.e. in the year 1991 appears to be in consonance with law.

11. The first appellate Court, however, took a view that the petitioner had knowledge of execution of Will and thus, limitation will start from the year 1980.

12. Learned counsel for the petitioner submits that the findings so rendered by the first appellate Court is not in tune with the pleadings and the evidence.

13. In my view, even if, it is held that the petitioner was not aware of execution of Will in the year 1979 and acquired knowledge of the same in the year 1988, still the suit would be barred by limitation as held by the trial Court.

14. Further, the petitioner has pleaded that cause of action lastly arose on 8-8-1994. If the cause of action has lastly arose on 8-8-1994, the statement indicate that it arose on earlier occasion as well. Such pleadings coupled with the facts noted above is sufficient to hold

that the finding of fact of the Courts below is in conformity with the pleadings and evidence led by the parties.

15. Learned counsel for the petitioner, however, has placed reliance upon two judgments to contend that suit for possession of immovable property based on title can be filed within 12 years.

16. The first judgment is in the case of ***Ram Nagina Rai and another Vs. Deo Kumar Rai (deceased) by L.Rs. and another [(2019) 13 SCC 324]***. The Supreme Court has delve upon the ingredients of the adverse possession and test to be applied to determine the same. The defendants before the Supreme Court contested the suit on the ground that they have perfected the title by adverse possession. Thus, the defendants therein admitted ownership of the plaintiff. Such is not the case here. The respondents herein have never admitted the title/ownership of the petitioner or his predecessor and, therefore, the suit for declaration of ownership by the petitioner on the basis of Will ought to have been filed within three years from 1988. The aforesaid judgment will be of no help to the petitioner.

17. Another judgment which was relied upon by the petitioner's counsel is of coordinate Bench of this Court in the case of ***Arpana d/o Prithviraj Punwatkhar Vs. Shrirang s/o Shripat Punekar and others [2018(2) Mh.L.J. 654]***. The plaintiff therein had filed a suit seeking declaration that the Will executed by the defendant is null and void. The suit was contested on

the ground that the plaintiff had knowledge of execution of Will, even prior to the cause averred therein. The coordinate Bench found that the suit challenging Will dated 16-7-1997 was within limitation on the ground that the limitation would commence from the date when the plaintiff became major. The coordinate Bench, taking recourse to Section 8 of the Limitation Act, which provides for special exceptions, held that suit was not barred by limitation. In my view, the reliance placed on this judgment is misconceived in as much as the facts before the coordinate Bench were altogether different. It is nobody's case here that the suit was filed by the minor or that the petitioner – plaintiff was entitled for benefit under Section 8 of the Limitation Act.

18. Put altogether, the concurrent findings of facts as noted by both the Courts below that cause of action arose in the year 1988 and suit for declaration and possession ought to have been filed in the year 1991 and the suit having been filed in the year 1994 is barred by limitation, requires no interference in second appeal. The substantial question of law is answered in affirmative.

19. The second appeal is, accordingly, dismissed with no order as to costs.

(Anil L. Pansare, J.)