



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 28 OF 2014

**SMT. KASTURBAI W/O RAMDAS SHIMPI AND OTHERS
VERSUS
RATANSINGH DAYARAM RAJPUT AND OTHERS**

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Advocate for Appellants : Mr. Sanket S.Kulkarni

Advocate for Respondents : Mr. Girish V. Wani

CORAM : SHAILESH P. BRAHME, J.

DATE : 11.11.2025

PER COURT :

Heard both sides. Being aggrieved by the judgment and decree passed by both the Courts below in dismissing the suit, the plaintiffs have preferred present second appeal.

2. Appellants filed Regular Civil Suit No. 561/1989 for possession, perpetual injunction and mandatory injunction in respect of Grampanchayat house No. 382. Ramdas Sitaram Shimpi was the original owner of the suit property, who is husband of appellant no. 1 and father of appellant nos. 2 and 3. It is stated that he illegally alienated to Shamlal Rajput and the name of the respondent no. 1 was entered. After attaining majority, appellant nos. 1 and 2 found the alienation, which was made by their father. The names were mutated illegally in-collusion with the respondents.

3. Respondent no. 1 contested the suit on the ground that the suit property was sold by registered sale-deed dated 17.06.1977, executed by Lakha Thansing Rajput, Shamlal Thansing Rajput and Rpuchand Thansing Rajput and since then respondent no. 1 was in possession. The suit is stated to be barred by time.

4. The Trial Court dismissed the suit on merits vide judgment dated 24.01.2001. The decree is confirmed in Regular Civil Appeal No. 182/2005 vide judgment dated 05.01.2013.

5. The learned counsel Mr. Kulkarni submits that both Courts below committed patent illegality in dismissing the suit. Appellant no. 2 and 3 were minor when alleged sale-deed was executed on 17.06.1977. There was no cause of action in 1967. There is nothing on record to show that they became major in 1967. The substantial question of law pertains to the limitation. It is submitted that the title of the plaintiffs is doubted arbitrarily on account of nature of the suit property, which is also another substantial question of law.

6. The learned counsel Mr. Wani submits that there are concurrent findings of facts which are reasonable and arrived at after taking into consideration entire material on record. It is submitted that sale-deed dated 17.06.1977 was not challenged in the suit. No endeavour was made by the appellants to disclose the date of births for ascertaining their attainment of majority. There is no document on record to show title of the appellants.

7. I have gone through the judgments passed by both Courts below. Concurrent findings of facts are recorded considering oral and documentary evidence on record. The appellants had filed suit for possession and injunction. After receiving the notice reply, appellants could have taken steps to question the sale-deed. It is incomprehensible as to why sale-deed dated 17.06.1977 was not challenged when the plaint discloses that alienation was made in favour of respondent no. 1. Therefore the suit is defective.

8. The appellants have not disclosed the date of birth which was within their special knowledge and everything was left to the guess work. The appellant no. 1 was all the while major and she could have filed suit in time. Both courts below have rightly held that suit is barred by limitation. I do not find any substantial question of law in that regard.

9. Respondent no. 1 purchased the suit property vide sale-deed dated 17.06.1977 from Lakha Thansing Rajput, Shamlal Thansing Rajput and Rupchand Tanshing Rajput. He is in possession since then and accordingly his name was mutated in the record of right. The sale-deed dated 11.06.1943 was not placed on record. Besides that the nature of the subject matter put forth by the appellants is held to be dicey. The finding in respect of the title of the appellants cannot be said to be perverse or arbitrary. There is no merit in the submission of the appellants.

10. The Second Appeal is dismissed.

(SHAILESH P. BRAHME, J.)

mkd/-