



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 SECOND APPEAL NO. 116 OF 2025

Maroti Ramji Kendre

VERSUS

Govind Manika Munde And Others

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Advocate for Appellant : Mr. Pathan Hamzakhan I.

Advocate for Respondent 1 : Mr. Dhage Vaibhav B.

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : March 26, 2025

PER COURT :-

1. The appellant/original defendant no.9 impugns the judgment and decree dated 7.12.2017 passed by the District Judge, Kandhar in Regular Civil Appeal No.10 of 2014, by which the judgment and decree dated 27.1.2014 passed by the Civil Judge, Junior Division, Kandhar in RCS No.145 of 2012 has been reversed and suit of respondent no.1/original plaintiff for partition, separate possession and declaration has been decreed.

2. Respondent no.1/original plaintiff instituted Regular Civil Suit No.145 of 2012 seeking decree of partition and separate possession in respect of suit property bearing survey no.17/6 (Block no.78) situated at village Mundewadi, Tq.

Kandhar. It is contention of plaintiff that his father Manika Dhondiba Munde was original owner of the suit property. He partitioned the same during his lifetime and out of 85R land retained 45 R for himself and allotted 10R each to plaintiff and defendant nos.1 to 3. However, after death of Manika, 45R land allotted to his share was not partitioned amongst plaintiff and defendant nos.1 to 3. Defendant no.1 taking disadvantage of the situation, mutated entire land in his name and transferred the same to defendant no.8 under registered sale deed dated 21.12.2005. Eventually, defendant no.8 transferred 20R land in favour of appellant/defendant no.9. In Diwali 2011 plaintiff came to know about execution of the sale-deed and asked the defendant for partition and separate possession of his share. They denied the same, which is said to be the cause of action.

3. Defendant nos.3,4,5,6 and 7 proceeded ex-parte in the suit. Defendant nos.1 to 8 and 9 appeared, but failed to file the written statement.

4. Trial Court framed issues, recorded finding that the suit property is joint family property of plaintiff and defendant nos. 1 to 7. However, dismissed suit on the ground of limitation

observing that as per Article 58 of the Schedule of Limitation Act, 1963, the suit ought to have been filed within a period of three years from the date of execution of the sale-deed in the year 2005 by defendant no.1 in favour of defendant no.8.

5. Aggrieved plaintiff filed appeal before the District Judge, at Kandhar vide R.C.A. no.10 of 2014. The appellate Court observed that suit is very well within limitation. Eventually, decreed the suit and declared that plaintiff is entitled for 1/7th share in the suit property and sale-deeds dated 21.12.2005 and 31.1.2007 are not binding on right/share of the plaintiff.

6. Mr. H. I. Pathan, learned advocate appearing for the appellant submits that defendant no.1 executed sale-deed dated 21.12.2005 in favour of defendant no.8 on the basis of mutation entry. Thereafter, vide sale-deed dated 31.1.2007 defendant no.8 transferred suit property in the name of appellant/defendant no.9. Suit came to be instituted on 4.7.2012. According to Mr. Pathan, Article 58 of the Limitation Act would govern the proceeding, which provides for limitation of three years for filing suit for declaration. According to him, Trial Court has rightly applied law of limitation and dismissed the suit being barred by limitation. He submits that appellate

Court has misinterpreted Article 58 of the Act and recorded finding that suit was within limitation.

7. Mr. V. B. Dhage, learned advocate appearing for the respondent no.1 supports the judgment and decree as passed in appeal.

8. Factual matrix as stated above is undisputed, except statement in the plaint that plaintiff got knowledge about execution of sale-deed of 2005 and 2007 in Diwali of 2011. Plaintiff not only pleaded aforesaid fact but also deposed in his evidence that he got knowledge as to aforesaid sale-deeds in the year 2011. Contents of plaint are neither controverted nor plaintiff has been cross-examined on the aforesaid aspect. Nothing is brought on record to show that plaintiff has knowledge about aforesaid sale-deeds prior to 2011. In this factual matrix, it is necessary to find out which Article of the Limitation Act would apply to the facts of the case.

9. Plaintiff instituted the suit for partition and separate possession and seeks consequential declaration as sale-deeds executed in the year 2005 and 2007 by defendant no.1 are not

binding on his rights. Looking to contents of the plaint, Article 110 would apply, which reads thus :-

“110. By a person excluded from a joint family property to enforce a right to share therein.
Twelve years.
When the exclusion becomes known to the plaintiff.”

.....

Article 110 of the Limitation Act, 1963, prescribes a 12-year limitation period for a suit by a person excluded from joint family property to enforce their right to a share therein, starting from when the exclusion becomes known to the plaintiff.”

10. Admittedly, suit property was joint family property of plaintiff and defendant nos.1 to 7. Therefore, even assuming that in 2005 defendant no.1 impliedly excluded from joint family properties, suit is filed in the year 2012 is well within a period of twelve years. Therefore, when main relief claimed in the suit is for partition and separate possession and consequential declaration is sought against unauthorized sale-deeds executed by defendant no.1, limitation of twelve years from the date when exclusion became known to the plaintiff would apply.

11. In the result, no substantial questions of law arises for consideration in this second appeal. Second appeal stands **dismissed**.

(S. G. CHAPALGAONKAR, J.)