



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 322 OF 2024
WITH CA/13868/2024

Shailendra Shankar Jadhav ...Appellant

Versus

Savita Vijay Jadhav & Anr ...Respondents

- Mr. S. S. Gangakhedkar, Advocate for the Appellant
- Mr. S. S. Kulkarni, Advocate for the Respondent No. 1

CORAM : R. M. JOSHI, J
DATE : AUGUST 06, 2025

PER COURT :

1. This Appeal under Section 100 of the Code of Civil Procedure takes exception to the concurrent findings recorded by the Trial Court and confirmed by the First Appellate Court in decree passed in RCS No. 345/2012 dated 26.03.2019 and confirmation thereof in RCA No. 101/2019 by judgment dated 23.11.2023.

2. Appellant is Defendant. Respondents/Plaintiffs filed suit against Defendant for partition and separate possession of the suit properties. Plaintiff No. 1 is widow of Vijay Jadhav and Plaintiff No. 2 is his father. Plaintiff filed suit for partition and separate

possession on the ground that her husband Vijay was a coparcener of the joint family and after his death her name was recorded in the record of rights in respect of suit property. There is allegation in the plaint about she demanding the partition and on refusal thereof suit came to be filed in the year 2019.

3. This suit came to be contested by the Defendant on all other points but on ground of limitation. Consequently, issue of limitation was not framed. Trial Court decreed the suit by judgment and decree dated 26.03.2019. Defendant challenged the said decree by preferring Appeal being RCS No. 101/2019 unsuccessfully. Hence, this Appeal.

4. It is the contention of learned Counsel for the Appellant that the Trial Court has failed to frame the issue of limitation and since the suit is barred by limitation, it amounts to substantial question of law. It is sought to be argued that the husband of Plaintiff No. 1 died in the year 1995 and suit has been filed in the year 2012, this fact, according to him, itself shows that the suit has been filed belatedly and hence, in view of the judgment of the Supreme Court in case of

R. Nagaraj (Dead) through Lrs and Another vs. Rajmani and Others, 2025 SCC OnLine SC 762 it was not maintainable. To support his submissions, he placed reliance on following judgments: *V. M. Salgaocar and Bros. vs. Board of Trustees of Port of Mormugao and Another, (2005) 4 SCC 613* & *S. Shivraj Reddy (Died) thr his Lrs. And Another vs. S. Raghuraj Reddy and Others, 2024 SCC OnLine SC 963.*

5. Learned Counsel for Respondents/Plaintiff supported the impugned order with submission that since the point of limitation is not a pure question of law but mixed question of fact and law, cannot be permitted to be raised in the Second Appeal for the first time.

6. No doubt, there is substance in the contention of learned Counsel for the Appellant that in view of Section 3 of Limitation Act, it shall be the duty of the Court to consider the issue of limitation though not specifically raised by the Defendant. In view of this provision, when from the plaint itself it is indicated that the suit is barred by limitation, irrespective of the fact where the issue of limitation is raised or not by the Defendant, the Trial Court is

required to consider the same. Here in this case, however, perusal of the plaint does not indicate that the suit could be said to be barred by limitation.

7. There cannot be any dispute made with regard to the proposition of law laid down by the Supreme Court that where it appears from the pleading that suit has been filed belatedly without explaining the delay, it deserves to be dismissed. In the instant case, however, there is a specific pleading in the plaint that on the death of husband, Plaintiff No. 1's name came to be mutated in the record of rights. This indicates that there was no exclusion of the Plaintiff No. 1 from the suit properties. There is further specific pleading about refusal of the Defendant to partition the suit property in the year 2012. Thus, the cause of action arose for the Plaintiff to file suit when partition is refused. Thus, it cannot be said that the suit was filed belatedly much less beyond period of limitation.

8. In case of V. M. Salgaonkar and Bros. (supra) in paragraph 20 it is observed by the Supreme Court that when the suit is barred by limitation, the Court

should dismiss the suit even if the Defendant has not raised the plea of limitation. This would apply only in case where the perusal of the plaint itself indicates that the suit is barred by limitation. However, when the suit is not apparently barred by limitation on the basis of pleadings in the plaint, it is mandatory for the Defendant to raise the issue of limitation.

9. It is settled position of law that the issue of limitation is not a pure question of law but a mixed question of fact and law. Thus, such issue needs to be raised at the Court of first instance. Such issue cannot be permitted to be raised in the Second Appeal. Here in this case, no such plea of suit is barred by limitation was raised by Defendant. Except this issue sought to be raised, it is not canvassed that any other question of law is involved in this Appeal. Hence, no substantial question of law is involved in this case.

10. In the result, Appeal stands dismissed. Pending civil application(s), if any, stands disposed of.

(R. M. JOSHI, J.)