

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.370 OF 2019
WITH
CIVIL APPLICATION NO.167 OF 2016
IN
SECOND APPEAL NO.370 OF 2019**

1. Narayan Laxman Raul,
Since Deceased Through Sole
Legal Heirs No.2.
2. Mrs. Vrushali Shyam Dholam
Age-66 years, Occ- Household,
R/o. B-15 Ashish Building,
A/15, Wagale Estate, Shrinagar,
Opp Minar Bungalow,
Thane (West) Dist- Thane.

..Appellants
(Ori. Plaintiffs)

Versus

1. The Administrative,
Ratnagiri Jilha Sahakari Krushi Gramin
Bahuuddeshiya Vikas Bank Maryadit
Ratnagiri, Main Office- Ratnagiri.
2. The Manager,
Ratnagiri Jilha Sahakari Krushi Gramin
Bahuuddeshiya Vikas Bank Maryadit
Ratnagiri, Main Office- Ratnagiri.
3. Shri Desai
Ex-Special Recovery Officer,
Ratnagiri Jilha Sahakari Krushi Gramin
Bahuuddeshiya Vikas Bank Maryadit
Ratnagiri, Main Office- Ratnagiri.
4. Kishav Krushnaji Joshi,
Age: about 73 years, Occupation: Trade,
R/o Near Lata Talkies, Ratnagiri
(S.A. stands abated against deceased
Respondent No.4 vide Reg. Judl-II
Order dated 17.02.2017 passed in CA/166/2016)
5. Ganesh Madhav Alawani,
Age about 71years,

Occupation: Agriculture and Trade,
R/o. 5B, Milan Society,
Kothrud, Pune.

..Respondents
(Ori. Defendants)

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Mr. Pradeep Salgar i/by Mr. Sumit Kothari, Advocate for Appellants.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 10th NOVEMBER, 2025.

FINAL ORDER:-

1. The present Appeal takes exception to judgment and decree dated 27.03.2015 passed by Principal District Judge, Ratnagiri in Regular Civil Appeal No.105/2009, thereby upholding judgment and decree dated 28.07.2009 passed by Joint Civil Judge, Junior Division, Ratnagiri in Regular Civil Suit No.85/1997, thereby dismissing suit filed by appellants/plaintiffs. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The appellants/plaintiffs instituted Regular Civil Suit No.85/1997 seeking relief of declaration that auction sale of suit land is illegal and recovery of possession. It is contention of plaintiffs that Sou Indumati Raul i.e. wife of plaintiff no.1 and mother of plaintiff no.2 was owner of suit property. She spend huge amount for its development. She obtained loan of Rs.7500/- from defendant no.2-Bank for digging Well and purchasing of oil engine. She repaid certain installments. However, because of transfer of plaintiff no.1 to Dound and thereafter many places like Sangli and Pune, loan installments could not be repaid. The defendant no.2-Bank took

measures for recovery of loan amount and auctioned suit property in year 1982 behind back of Sou. Indumati Raul. The plaintiffs came to know about auction and possession of defendant over suit property in year 1994 and immediately filed suit.

3. The defendants filed common written statement *inter alia* contending that suit land was mortgaged with Bank in pursuance to default of borrower. On 18.05.1982, it was auctioned. During lifetime, Sou. Indumati never raised any objection or challenged auction sale before Competent Authority. The present suit is filed suppressing material facts. The suit is barred by limitation.

4. The Trial Court framed issues based on pleading of parties, recorded evidence and after hearing dismissed suit, holding that auction dated 18.05.1982 was legal and suit is barred by limitation. Even Appeal filed by plaintiffs before District Judge has been dismissed concurring with findings and conclusion of Trial Court.

5. Mr. Pradeep Salgar, learned Advocate appearing for appellants submits that plaintiffs had no knowledge regarding auction. The suit is filed within three years after getting knowledge of auction proceeding. It was within limitation. Further, auction conducted by respondent-Bank is not in conformity with provision of Maharashtra Co-operative Societies Act and Rules framed thereunder (for short 'MCS Act and Rules').

6. Having considered submissions advanced, it can be observed that suit property was mortgaged by Sou. Indumati Raul towards security of loan obtained from bank. Admittedly, there was default in repayment of loan. Therefore, mortgaged property was put to auction. The defendants placed on record documents pertaining to auction process. Those documents are proved through evidence of Mr. Arjun Desai, who was Manager of Bank. The auction sale has been confirmed by Assistant Registrar vide his order dated 12.07.1982. The sale certificate is issued in favour of defendant no.4. Both Courts on appreciation of evidence found that Bank has followed due process of law in conduct of auction process under provisions of MCS Act and Rules.

7. Pertinently, plaintiffs or Sou. Indumati Raul never filed Appeal challenging auction proceeding in terms of provision of MCS Act and Rules. The plaintiffs could have filed dispute before Co-operative Court under Section 91 of MCS Act, since dispute raised by plaintiffs touches to management or business of Society. Even plaintiffs had remedy of filing Appeal under Section 152 or Revision under Section 154 against auction. The jurisdiction of Civil Court in such matters is expressly barred under Section 163 of MCS Act.

8. The Courts below have concurrently held that suit filed by plaintiffs is barred by limitation. The plaintiffs seek declaration against auction dated 18.05.1982, whereas suit has been filed on

27.03.1997. The plaintiff no.1 was Government Servant and he served as Police Sub Inspector under State of Maharashtra. The plaintiffs were aware about loan and mortgage of property. Admittedly, certain loan installments were repaid by plaintiff no.1 and after transfer from Ratnagiri, he never turned back to repay loan. In this background, plaintiffs cannot assert that they got knowledge of auction proceeding of 1982, first time in year 1994 before institution of suit. It appears that, plaintiffs had issued notice dated 09.02.1994 to Bank in subject matter, which was replied on 11.03.1994. The suit appears to have been instituted after more than three years of date of issuance of notice. All these circumstances clearly shows that plaintiffs have filed afterthought suit, which is hopelessly barred by limitation.

9. In result, no substantial question of law arises for consideration in this Second Appeal. Hence, Second appeal stands dismissed.

10. In view of dismissal of Second Appeal, pending Civil Application also stands disposed of.

(S.G. CHAPALGAONKAR, J.)