



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

SECOND APPEAL NO. 128 OF 2020.

Tanaji Laxman Mate

-VERSUS-

Chandrabhagabai Natthuji Titarmare and others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri Alok Daga, Advocate for the Appellant.
Shri N.M. Jibhkate, Advocate for Respondent No.1.

CORAM : ROHIT W. JOSHI, J.

DATE : APRIL 21, 2025.

Heard.

2. The original plaintiff, who is respondent no.1 herein has filed a suit for partition and separate possession, being Regular Civil Suit No.28/2008. She claimed that the suit properties are ancestral properties of her father deceased Pandurang, and she is his dependent. The learned Trial Court has dismissed the suit vide judgment and decree dated 05.03.2013 solely on the ground of limitation. The trial Court has observed that the

plaintiff has relinquished her share in the suit properties on 22.05.1984 and has placed reliance on a document in respect of entry in register of mutation at Exh.61. The learned Trial Court has also referred to the statement in cross-examination by Sudhakar, son of original plaintiff and her constituted attorney, wherein he has stated that the plaintiff has made demand of partition prior to a period of about 30 years from the date of filing of the suit. The suit is dismissed by the trial Court in view of bar of limitation.

3. Aggrieved by the dismissal of her suit, the plaintiff filed First Appeal being Regular Civil Appeal No.130/2013. The learned First Appellate Court has allowed the appeal vide judgment and decree dated 11.07.2016 on the ground that time for filing a suit for partition in respect ancestral property commence from the date on which exclusion becomes known, and the defendants have failed to bring on record any evidence to establish exclusion.

4. Shri Daga, learned Counsel for the appellant/ original defendant no.1 contends that the learned trial Court has rightly dismissed the suit as barred by limitation in view of the admission of plaintiff's witness, referred to above and also in the light of document at Exh.61, whereby the plaintiff has relinquished her right in the suit property in favour of defendant no.1/appellant. It is the contention of Shri Daga, that out of 7 properties forming subject matter of the suit, 4 properties are ancestral and 3 properties are self-acquired properties of the father/ Pandurang. As regards the self-acquired properties of father Pandurang, the plaintiff, Laxman - predecessor of defendant nos. 1 to 5 and defendant no.6 are entitled to the same as Class-I legal heirs. The said Class-I legal heirs inherit the properties under Section 8 of the Hindu Succession Act, 1956. The properties inherited by Class-I legal heirs under Section 8 of the 1956 Act, are inherited by them as tenants in common. Such

property inherited does not bear the character of joint family property. It is well settled that relinquishment of property, other than the property which is a joint Hindu family property, has to be necessarily by a registered document. Admittedly there is no registered document of relinquishment by the plaintiff. Therefore, the alleged relinquishment of the year 1984 is of no consequence qua the 3 self-acquired properties. It also needs to be mentioned that the document of relinquishment has not seen the light of the day and only evidence that is brought on record is a mutation entry. It also needs to be mentioned that the defendants have not entered the witness box. In that view of the matter, it will not be safe to place reliance on the document Exh.61, even for the purpose of computation of limitation. The first contention made by the learned Counsel for the appellant in respect of three properties which are stated to be self-acquired properties, is therefore liable to be rejected.

5. As regards other 4 properties, which according to Shri Daga, are ancestral properties, the plaintiff who is daughter, got right to claim partition in Joint Hindu family property in her individual capacity as a coparcener for the first time by virtue of Section 6 of the Hindu Succession (Amendment) Act, 2005 which has come into force w.e.f. 09.09.2005. The suit is filed in the year 2008. The suit is obviously filed within a period of 12 years, and as such with respect to the 4 suit properties, it cannot be said that the suit is barred by limitation. No substantial question of law therefore, arise for determination in this Second Appeal, the same is dismissed. No costs.

JUDGE