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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 648 OF 2017

Ashok Jaisingh Kahar (Lachure)
Since deceased Thr. LRs. And and Others. ...Appellants.

Versus

Sau Latabai Ashok Waghale and Others. ...Respondents.

Mr. Shriram S. Kulkarni for the Appellant.
Mr. Sajiv Sawant, Mr. Sandeep Barve, Mr. Santosh Wagh and Ms. Sonali Patil i/b B. K. Barve & Co., for the Respondent.

Coram : Sharmila U. Deshmukh, J.
Date : May 3, 2024.

P. C. :

1. Being dissatisfied by the judgment and order dated 10th April 2017 passed by the Appellate Court in Regular Civil Appeal No.147 of 2009 partly allowing the appeal thereby quashing the judgment of the trial Court dated 26th November 2009 passed in Regular Civil Suit No. 80 of 2007 and partly decreeing the suit thereby determining the shares of the Plaintiff no.2, the Defendant Nos.1 to 3, Plaintiff No. 1, the original Defendant No.2 is before this Court. For the sake of convenience, the parties are referred to by their status before the trial Court.

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2. Facts of the case are that RCS No. 80 of 2007 was instituted by the Plaintiffs who are the daughters of one Jaisingh Kahar. The Defendant No. 1 is the mother of Plaintiffs and the Defendant Nos. 2 and 3 are the brothers of Plaintiffs. The suit property is land bearing Gat No. 920 and the case of the Plaintiff is that the said land was ancestral property and after the death of their father, they had inherited the said land. By virtue of Mutation Entry No.803, the Defendants got mutated the property in their name and as the Plaintiffs were residing at their matrimonial house, they were not having knowledge about the said mutation entry. Partition was demanded, however, the same was refused and thus the suit came to be filed.

3. The Defendant Nos. 1 to 3 filed their written statement denying the share of Plaintiffs. It was contended in the additional written statement that the plaintiffs were having knowledge of the Mutation Entry No. 803 in the year 1976 itself and the partition was demanded in the year 1981, which was refused and as such the suit is barred by limitation.

4. The parties went to trial and the trial Court by judgment dated 26th November 2009 dismissed the suit holding that the Plaintiffs had no right to claim partition in the suit properties as they are not the

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coparceners along with the Defendant Nos. 2 and 3. On the issue of limitation, it was held that the plaintiff No.1 was 16 years old and the Plaintiff No. 2 was 18 years old in the year 1975, i.e., at the time of death of their father and thus the Plaintiffs had attained the age of understanding and therefore it cannot be believed that their names were not entered in the revenue records and dismissed the suit.

5. As against this, the original Defendant No. 2 filed RCA No.147 of 2009. The Appellate Court on re-appreciation of evidence held that admittedly the suit property is the ancestral property of deceased Jaising Kahar and the Plaintiffs and the Defendants are his legal heirs. The Appellate Court held that as far as the issue of limitation is concerned, the Defendants had suppressed the material fact before the revenue officer that in addition to the mother and two brothers there are two sisters and thus the mutation entry in the name of Defendant Nos. 1 to 3 has been illegally certified without considering the claim of the Plaintiffs in the suit property. The Appellate Court held that it is probable that the knowledge was acquired in February 2007. As regards the rights to the coparcenery property, the Appellate Court considered the amended provisions of Section 6 of the Hindu Succession Act, 1956 and held that the Plaintiffs are entitled to a share in the coparcenery property.

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6. Heard Mr. Shriram Kulkarni, learned counsel appearing for the Appellant and Mr. Sawant, learned counsel appearing for the Respondents.

7. Learned counsel appearing for the Appellant would submit that the substantial question of law that arises in the present second appeal is the issue of limitation. He submits that the Plaintiff has admitted in the cross-examination that they were aware of the mutation entry which was certified in the year 1976 and the suit having been filed in the year 2007 is clearly barred by limitation. He has rightly not advanced any submission as regards the rights of the daughters in the coparcenery property in view of the settled position in law.

8. Considered the submissions and perused the record.

9. It is not in dispute that the suit property is the ancestral property of the parties and the Plaintiffs being sisters were entitled to share in the suit properties. The only issue which arises is the period of limitation. Article 110 of the Limitation Act, 1963 provides for a period of 12 years from the date when the exclusion becomes known to the Plaintiff. The contention of the Defendants is that the mutation entries were known to the Plaintiffs in the year 1976 itself

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and thus calculated, the period of 12 years from the date of certification of mutation entry, the suit is barred by limitation.

10. Perusal of the cross-examination of the Plaintiff discloses that she has admitted that she was aware of the belongs to her father. She has further admitted that her father had expired in the year 1975 and at that time the Plaintiffs were not married. She has further admitted that after her marriage, she was visiting her maternal house. Pertinently, she has denied the suggestion that she had visited the maternal house at the time of Diwali festival in the year 1981. She has admitted in her cross-examination that part of the suit property was sold by the Defendants to third party. She has admitted that same came to her knowledge one month prior to the filing of the suit. The cross-examination of the Plaintiff does not indicate that the Plaintiffs had knowledge of the mutation entries certified in the year 1976. The finding of the trial Court that as the Plaintiffs had attained the age of understanding and therefore were aware of the mutation entries being certified is based on mere surmise and conjuncture particularly when the Plaintiff No. 1 was about 16 years of age in 1975 and was thus minor. It is not demonstrated from the record that the Plaintiffs had acquired knowledge in the year 1976 itself about the certification of the mutation entry. The burden was cast upon the Defendants to

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show the suit was not within limitation which burden they have failed to discharge. The Appellate Court has rightly considered that there was no occasion for the Plaintiff to know about the 7/12 extract of the suit property though she was visiting the maternal house and that only in the year 2007 when she had obtained the copies of 7/12 extracts that she became aware of the same. From the cross-examination of the Plaintiff, no material admission has been elicited to establish that the Plaintiffs were aware of the certification of mutation entry in the year 1976 itself. It is well settled that the question of limitation is a mixed question of fact and law and as there is failure to show that the suit is barred by limitation from the evidence on recrod, no substantial question of law arises in the instant second appeal. The appeal stands dismissed.

11. Needless to clarify that this Court has not gone into the issue as regards the effect of dismissal of the appeal filed by the Plaintiff no.1.

12. In view of the disposal of Second Appeal, nothing survives for consideration in the pending civil/interim applications and the same stand disposed of.

[Sharmila U. Deshmukh, J.]

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