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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO. 808 OF 2016

WITH

CIVIL APPLICATION NO. 1598 OF 2016

WITH

INTERIM APPLICATION NO. 738 OF 2023

WITH

INTERIM APPLICATION NO. 838 OF 2025

Vijay Shridhar Ghare

Age: 46 years, Occ: Agriculturist

R/at Bebadhole, Taluka Maval,

District Pune

....Appellant/Applicant
(Org. Defendant No.1)

Versus

1. Ashok Narayan Shinde
Age: 60 years, Occ: Retrd.
R/at 6 Army Welfare Coop.
Society, Salunkevihar, Kondhawa,
Pune 22
2. Vijaya Narayan Shinde
Age: 59 Years, Occ: Housewife,
R/at Omkar, Plot no. 8
Madhu Sanchaya Society,
Ganeshnagar, Pune 52
3. Sunanda Shankararao Khopade
Age: 64 years, Occ: Housewife,
R/at Pravatnshil Society,
Flat No. 8 near Sangamnagar,
Bibvewadi, Pune 37
4. Aruna Ramesh Shinde (Abated)
Age: 58 years, Occ: Household,
5. Rajesh Ramesh Shinde
Age: 35 years, Occ: Service,
6. Vinit Ramesh Shinde
Age: 32 years, Occ: Service,

4 to 6 residing at
Flat No. 50, Bildg. No P-4,
Oxford Village, Wanawori,
Pune 40

...Respondents/
(Org. Plaintiffs)

7. Suresh Narayan Shinde
Age: 71 years Occ: Retired,
R/at Manik Baug Society,
Sinhagadh Road, Pune 52

...Respondent/
(Org. Defendant No.2)

Mr. Niranjan A. Mogre a/w. Mr. Sujay H. Gangal & Mr. Swaraj M.
Savant, Advocates for the Appellant/Applicant.
Mr. Shriniwas S. Patwardhan, for Respondent Nos. 1 to 6.

CORAM : M.M. SATHAYE, J.

DATE : 18th JULY, 2025

JUDGMENT :

1. This Second Appeal is filed challenging Judgment and Decree dated 01.04.2016 passed in Civil Appeal No.718 of 2011 by District Judge-16, Pune, confirming the Judgment and Decree dated 08.11.2011 passed by Joint Civil Judge, Senior Division, Pune in Regular Civil Suit No.145 of 2005. The Appellant is original Defendant No.1 and Respondent Nos.1 to 6 are original Plaintiffs. Respondent No.7 is original Defendant No.2.

CASE

2. Few facts necessary for disposal of the Second Appeal are that Plaintiff Nos.1 & 2 and Defendant No.2 are real brothers. Plaintiff No.3 is their real sister and Plaintiff Nos.4 to 6 are legal heirs of their deceased brother Ramesh. These are sons and daughters of deceased

Narayan. The suit property stood in the name of Narayan who expired on 04.01.1965. After the death of Narayan Defendant No.2 Suresh became Karta/Manager of the family.

3. On 28.01.2002, the Plaintiffs received a notice from the concerned Talathi about proposed mutation entry in the revenue record of the suit properties. The Plaintiffs, thereafter found out that Defendant No.2-Karta Suresh has sold the suit properties to Defendant No.1 (present Appellant) under registered sale deed dated 08.02.2001. The Plaintiffs, thereafter, started revenue proceedings and ultimately filed the present suit on 28.01.2005. Defendant No. 2-Karta Suresh remained absent despite due service. The Trial Court, after hearing the parties and on appreciation of evidence, found that Defendant No.2-Karta Suresh had no right to execute the sale deed in favour of Defendant No. 1 (present Appellant) and the said sale deed is not binding on the Plaintiffs. The Trial Court found that Plaintiffs are entitled to necessary declaration. The Trial Court further found that the suit properties were not sold for legal necessity/benefit of the family by Defendant No.2 in the capacity of Karta. Under Issue No.7, the suit has been held as filed within limitation. Trial Court declared that Defendant No.2 had no right to sell the suit properties in favour of Defendant No.1 and held that the sale deed dated 08.02.2001 is not binding on the Plaintiffs.

4. The present Appellant filed the said appeal and challenged the Judgment and Decree of the Trial Court. The Appellate Court, by impugned Judgment and Decree has confirmed the decree passed by the Trial Court. The Appeal Court on re-appreciation of the evidence

and after hearing the parties found that the suit is not barred by limitation and the sale deed in favour of the Appellant is not binding on the Plaintiffs and that the Judgment and Decree of the Trial Court is legal and proper.

5. In these circumstances, the Appellant - purchaser from Karta, is before this Court in the Second Appeal.

6. This Court in its duty under Section 3 of the Limitation Act, 1963 ('the said Act' for short) called upon the parties to also make submissions as to whether in the facts and circumstances of the present case, Article 110 of the said Act can be applied for the purpose of limitation.

SUBMISSIONS

7. Learned counsel Mr. Mogre for Appellant submitted that in the facts and circumstances of the case, the suit filed on 28.01.2005 could not have been held as within limitation, in as much as, the suit is filed just within 3 years from the date of receipt of notice from Talathi on 28.01.2002. He submitted that the copy of the notice is not produced on record and therefore, Article 59 of the Limitation Act, 1963 ('the said Act', for short) will not help the Plaintiffs. Relying on Section 44 of the Transfer of Property Act, 1882, it is submitted that suit property is not a dwelling house and unit and the suit property is a land and therefore, it cannot be said that the Appellant is in joint possession with the other co-owners, as alleged. He then submitted that assuming that the suit is within limitation and case of the Plaintiffs is proved, even then the sale deed cannot

be held illegal to the extent of share of Defendant No.2-Karta and to that extent the suit cannot be decreed.

8. So far as the application of Article 110 of the said Act, Mr. Mogre submitted that the prayer in the plaint is not for enforcing a right to share in the suit properties. He submitted that the prayer is only for declaration about sale deed and therefore, Article 110 of the said Act cannot be applied. He relied upon the judgment of **Kalipada Chakraborti and Anr. v. Smt. Palani Bala Devi and Ors [AIR 1953 SC 125]**, to contend that when specific Article of limitation which covers a particular case is applicable, it is not proper to apply another Article, the application of which is not free from doubt. He further relied upon the Judgment of **Sunil Kumar and Anr. v. Ram Parkash and Ors. [(1988) 2 SCC 77]**, to contend that if the alienation of property by Karta is found unjustified then such alienation would be void except to the extent of Manager's share in Madras, Bombay and Central Provinces, which applies to present case being under Bombay Province. He further relied upon the judgment of **V.M. Salgaocar and Bros. v. Board of Trustees of Port of Mormugao and Anr. [(2005) 4 SCC 613]**, to contend that if the suit is *ex-facie* barred by limitation, then a Court has no choice but to dismiss the same.

9. *Per contra*, Mr. Patwardhan, learned counsel for the Respondents/Plaintiffs submitted that the suit is well within limitation. That issue was framed about limitation for which the Plaintiffs' evidence has been believed by both the Trial and the Appellate Court. That the factual aspect of filing the suit within 3 years from the date of knowledge and consequent application of

Article 59 of the said Act, is a question of fact concurrently held in favour of the Plaintiffs and does not require interference. He submitted that the possession of the Appellant cannot be held to be exclusive. That the Appellant has not filed any independent suit or even counter claim in this suit seeking partition and possession of 1/5th share of the Karta Suresh and therefore Appellant can not be heard to say suit cannot be decreed, at least to the extent of share of Karta. That since legal necessity is held as 'not proved', the entire sale deed must go and the Appellant can still file suit for partition. That under earlier orders it is clearly recorded that the Appellant was not agreeable to settlement which means he is inviting an order. About application of Article 110 of the said Act, Mr. Patwardhan has contended that if the pleadings in the plaint are read in whole, clear case is made out to enforce a right to share in the joint family property. He has relied upon the judgment of **Smt. Parmeshwari Devi and Ors. v. Mantoo Lal and Ors. [1980 SCC OnLine All 709]**.

CONSIDERATION

10. Having considered the rival submissions carefully and having gone through the record with the assistance of learned counsel for the parties, in my view, no substantial question of law is arising and the concurrent findings of the facts about limitation as well as legal necessity, do not require any interference. Reasons are as under.

11. Perusal of the cross-examination of the Plaintiffs' witness Shri. Vijay Narayan Shinde indicates that no questions were put to him about suit being filed beyond period of limitation. Plaintiffs' witness

has entered into witness box and has asserted the case of receiving notice from Talathi on 28.01.2002. This case has not been shaken in the cross-examination. No question/suggestion about limitation are put to the witness and therefore the factual aspects of filing the suit within 3 years from the date of knowledge of exclusion and consequent application of Article 59 of the said Act, is a question of fact concurrently held in favour of the Plaintiffs and does not require interference.

12. The dates of receiving notice from Talathi (28.01.2002) and filing of suit (28.01.2005) are admitted. Under Section 12(1) of the said Act while computing the period of limitation for any suit, the date on which such period is to be reckoned, is to be excluded. The word used in Section 12(1) of the said Act is 'shall'. As such, there is a mandate. Therefore day of receiving notice from Talathi (28.01.2002) is the date to be reckoned and therefore it has to be excluded. Therefore, the suit filed within three years from the date of knowledge is squarely within limitation as per Section 59 of the said Act. On this count alone, the concurrent findings of the fact about suit being within limitation, requires no further consideration.

13. However, since the parties were asked to make submissions about application of Article 110 of the said Act, I am considering those submissions. Overall reading of the plaint, especially paragraph No.4 thereof indicates that the suit claim is based on assertion that the suit properties are ancestral properties and name Defendant No.2 was recorded in the revenue record only being eldest in the family and as 'Manager/Karta' of the joint family who had no legal right to

sell undivided shares of the Plaintiffs. These averments coupled with the prayer seeking declarations, are required to be interpreted. It is material to note that there are no prayers seeking share in or partition of the property. In **Smt. Parmeshwari Devi's case (supra)**, relied upon by the Respondents, similar situation of application of Article 59 or Article 110 was under consideration. In the facts of that case, prayer for ejectment of purchaser and decree for joint possession was made. While dealing with such situation, Hon'ble Supreme Court has observed in paragraph 6 that -

“It is well settled that when the rights of the strangers intervene, Article 110 of the Limitation Act, 1963 would not apply.”

It is not in dispute that right of third party – the Appellant has intervened in the present matter. Therefore in the facts of this case, Article 110 will not apply. Also in **Kalipada Chakraborti's case (supra)**, when Hon'ble Supreme Court was considering application of albeit different articles (Article 124 or 141), it has observed in paragraph 16 that -

“We think that when there is a specific Article in the Limitation Act which covers a particular case, it is not proper to apply another Article, the application of which is not free from doubt”.

I respectfully agree with the same.

14. So far as the contention that Defendant No.2 had no disposing

capacity is concerned, the relationship between parties is admitted. It is not the case of Defendant No.2 that suit property was his self-acquired property. Defendant No.2 was served with the suit summons but he failed to appear before the Court and therefore, suit proceeded ex-parte against him. Therefore, it is obvious that the Manager/Karta in the family has conveniently avoided to appear before the Court.

15. Perusal of cross-examination of the Appellant/Defendant No.1 indicates that he has admitted that he has not seen concerned mutation entry which recorded names of wife and children of deceased Narayan and name of Defendant No.2 - Suresh was entered as joint family Manager. He has blankly stated that he did not find it necessary to take consent of other legal heirs of deceased Narayan. He has expressed inability to indicate anything about existence of legal necessity or otherwise. He has also expressed inability to say anything about disposing capacity of Defendant No.2. The Trial Court has clearly held that the Appellant could not prove that the property was sold for the benefit of family which is confirmed by the Appellate Court on re-appreciation of evidence.

16. Hon'ble Supreme Court in **Sunil Kumar v. Ram Parkash (supra)** has clearly held in paragraph 25 that when an alienation by Manager/Karta of joint hindu family is challenged, it is for the purchaser/alienee to prove that there was legal necessity in fact or he has made proper and bona fide enquiry as to existence of such necessity. This has not been complied with by the Appellant. Therefore, lack of legal necessity is held as proved by Courts below

as concurrent finding of the fact, and it requires no interference.

17. The Appellant has not filed any independent suit or counter claim seeking partition and possession of 1/5th share of the Defendant No.2 Suresh. This appeal is filed way back in 2016. Earlier orders of this Court indicate that time was given to the parties to explore the possibility of settlement. However, it is clearly recorded that the Appellant was not agreeable. So here is a purchaser who purchased from Karta of the joint family, who has not established legal necessity and has shown complete disregard towards its requirement.

18. So far as the argument about sale deed being valid at least to the extent of share of Defendant No.2 is concerned, it is seen that the decree of the Trial Court, as confirmed by the Appeal Court, only declares the sale deed to be not binding upon the Plaintiffs and therefore no separate finding or observation is necessary in that regard.

19. Since it is found on facts that suit is within limitation, paragraph 20 of the judgment of **VM. Salgaocar (supra)** relied upon by the Appellant will not advance the case of the Appellant. It is reiteration of settled principle of law.

20. In view of aforesaid facts and circumstance, the findings arrived at by the Courts below do not suffer any illegality or perversity. No substantial question of law is involved and the facts are decisive. There is no merit in the Appeal. The same is accordingly dismissed with no order as to costs. In view of the dismissal of the

Appeal, pending Civil/Interim Applications (seeking stay, injunction from receiving compensation and for bringing legal heirs of Defendant No.2 on record) do not survive and the same are also dismissed.

21. At this stage, learned Counsel for the Appellant seeks continuation of the order dated 20/12/2016 passed by this Court. Learned Counsel for the Respondents opposes the prayer. Considering the nature of order dated 20/12/2016 and nature of impugned Decree, in fairness, the effect of the present order dismissing the second appeal is stayed for the period of four weeks.

22. All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE J)