

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Amk

SUIT NO. 1718 OF 2012
WITH
NOTICE OF MOTION NO. 1483 OF 2013
WITH
NOTICE OF MOTION NO. 1671 OF 2013
WITH
NOTICE OF MOTION NO. 2575 OF 2012
WITH
NOTICE OF MOTION NO. 1376 OF 2013
WITH
NOTICE OF MOTION NO. 1482 OF 2013

Maria F. Sequireira & Ors. .. Plaintiffs
Vs.
Feroze H. Dugan & Anr. .. Defendants

Mr. Y. V. Sanglikar a/w. Mr. N. Chavan for the Plaintiff.
Mr. Rajiv Kumar, Sr. Advocate a/w. Ms. Neeta Solanki, Mr. Ish Jain i/b
Kiran Jain & Co. for Defendant No.2.
Mr. Prakash Ganwani, Mr. J. S. Solomon a/w. Ms. Soniya Putta i/b
Solomon & Co. for Defendant No.1.

CORAM : MRS. ROSHAN DALVI, J.
DATE : 19th MARCH, 2014.

P.C.

1. The plaintiffs have sued for declaration that a Deed of Conveyance dated 01.08.1949 is valid and subsisting and binding in respect of the suit property and that the plaintiffs are the true and lawful owners of the suit property and also that a later conveyance dated 12.01.1956 registered under No. 420 of 1956 was illegal and null and void and other incidental reliefs.

2. The plaintiffs have shown how their predecessor-in-title, the

husband of plaintiff No.1 and the father of plaintiff Nos.2 & 3 purchased the suit property under the aforesaid registered Deed of Conveyance in 1949 which was left unknown to the plaintiffs until mid June, 2011 when the plaintiff No.2 came across some old papers which were old and eaten up by termites and which crumbled into pieces and which he read with a magnifying lens, deciphering the number of registration, the words “conveyance” and “John”, their predecessor-in-title, before he discarded those old papers. The plaintiffs claim that the cause of action accrued to them upon seeing those papers and that the period of limitation would not begin to run until then.

3. In para 16 of the plaint, the plaintiffs have averred that the suit is within limitation, that the cause of action arose in 2011 when on 17.06.2011 the plaintiffs received a copy of the Deed of Conveyance and subsequently discovered the existence of a later conveyance registered under No. 420 of 1956.

4. Since the conveyance upon which the plaintiffs claim title through their predecessor-in-title is of 1949, the defendants have contended that the suit is barred by the law of limitation. The saving of the bar of limitation is, as aforesaid, upon the aforesaid case in para 6 of the plaint.

5. The preliminary issue under Section 9A shall have to be framed and decided. It is framed as follows:

Whether the suit is within limitation.

6. Counsel on behalf of the plaintiffs concedes that the plaintiffs shall have to lead oral evidence to prove how the plaintiffs acquired

knowledge of the Deed of Conveyance under which they claim ownership rights and consequent reliefs. The plaintiffs shall file their affidavit of examination-in-chief and affidavit of documents within 2 weeks. The admissibility of the documents of the plaintiffs shall be considered on 04.04.2014 at 3 p.m.

7. Notices of Motion Nos. 1483 of 2013 and 1671 OF 2013 are disposed of accordingly.

8. Notices of Motion Nos. 2575 of 2012, 1376 of 2013 and 1482 of 2013 are adjourned until the decision on the preliminary issue.

(ROSHAN DALVI J.)