

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

Second Appeal No.247 of 2015
(Padmakar s/o Narayan Bhonde and another v. Durga w/o Arunrao Datir
and others)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri D.U. Thakre, Advocate for Appellants.
Shri K.R. Lule, Advocate for Respondent No.1.

Coram : R.K. Deshpande, J.
Date : 26th April, 2016

Second Appeal No.247 of 2015 :

Heard the learned counsels appearing for the parties.

The lower Appellate Court has held that the suit in question for partition and separate possession was not barred by the law of limitation, as contained under Article 110 of the Limitation Act. Under Article 110 of the Limitation Act, the factor relevant for starting the period of limitation is the ouster from the property. It is held that the defendants have neither pleaded nor brought any evidence on record to show that the suit was barred by the law of limitation.

Normally, the question of limitation is a mixed question of law and fact and the burden is upon the plaintiff to come before the Court to establish that the suit filed is within a period of limitation.

The substantial question of law, which arises for consideration in this appeal, is as under :

Whether the lower Appellate Court has committed an error of law in holding that the suit in question was not barred by the law of limitation, as prescribed under Article 110 of the Limitation Act?

Admit.

Shri Lule, the learned counsel, waives service of notice of the respondent No.1.

Call for R & P.

Civil Application (CAF) No.1029 of 2015 :

Issue notice to the non-applicants/respondents, returnable on 16-8-2016.

In the meantime, the proceedings for execution of the decree passed by the lower Appellate Court shall remain stayed.

Judge.

Lanjewar