

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Second Appeal No. 4 of 2019

Md. Safique and Ors.	...	...	Appellants
	Versus		
Md. Hashim and Ors.	...	...	Respondents

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellants	: Mr. A. K. Sahani, Advocate
For the Resp. No. 1	: Mr. Nehru Mahto, Advocate

15/22.04.2025

Heard the learned counsel appearing on behalf of the appellants.

2. Learned counsel for the appellants submits that the judgment passed by the learned trial Court was *ex-parte*, but on the face of the case put forth by the plaintiff, the suit was barred by limitation. He submits that with respect to the same property, there was a subsequent sale-deed which was dated 06.01.1985 and at best the cause of action arose on 25.02.2006 when the defendant, as per the plaintiff, had constructed the houses over the suit property. He submits that the suit was filed on 20.07.2010 and even if best case of the plaintiff is taken into consideration, the suit was barred by limitation.

3. Learned counsel for the appellants has referred to Article 58 and 59 of the Limitation Act, 1963 and also referred to section 3 of the Limitation Act which casts a duty upon the Court to see as to whether the suit is within prescribed period of limitation under the Act of 1963. The learned counsel has submitted that it was for the Court to examine as to whether the suit was barred by limitation or not and if the limitation is taken into consideration, the suit itself was maintainable. Learned counsel for the appellants has placed the judgments passed by the learned Courts and has submitted that this aspect of the matter has been completely ignored by both the learned Courts. He has referred to the substantial question of law no. (G), as suggested in the memo of appeal, and has submitted that a point has been raised with regard to limitation.

4. Considering the aforesaid submissions, this appeal is **admitted** for hearing on the following substantial question of law:

“Whether the suit was barred by limitation?”

5. The contesting respondent no. 1 representing the plaintiff has already entered appearance and he is present in the Court.
6. Since respondent no. 1 has already entered appearance, no notice needs to be issued to the respondent no. 1.
7. So far as other respondents are concerned, they are proforma respondents. As per the records of this case, the respondent no. 7 has already expired and vide order dated 18th July 2024 the proceeding has abated as against respondent no. 7.
8. Let notice be issued to the respondent nos. 2 to 6 and 8 under ordinary process for which requisites etc. be filed within a period of 10 days from today.
9. Let the records be called for from the learned Court concerned.
10. Post this case on 11th June 2025 under appropriate heading.

(Anubha Rawat Choudhary, J.)

Pankaj