

(2016) 12 BOM CK 0093

In the Bombay High Court

Case No : Second Appeal No.453 Of 2016 Along With Civil Application No. 920 of 2016

Sharad Krishnaji Kulkarni

APPELLANT

Vs

Dr. Atul Sadashiv Kulkarni

RESPONDENT

Date of Decision : 15-12-2016

Acts Referred:

Bombay Court Fees Act, 1959 — Section 14(1)
Civil Procedure Code, 1908 (CPC) — Section 100
Limitation Act, 1963 — Article 65, Schedule I

Citation : (2017) 1 AIRBomR 429 : (2017) 3 ALLMR 897 : (2017) 2 BCR 510

Hon'ble Judges : R.D. Dhanuka, J.

Bench : Single Bench

Advocate : Mr. Chetan G. Patil, Advocate, for the Appellant/Applicant; Mr. Yuvraj P. Narvankar, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

R.D. Dhanuka, J.—By this appeal filed under section 100 of the Code of Civil Procedure, 1908, the appellant (original defendant) has impugned the judgment and decree dated 20th January, 2016 passed by the learned District Judge-2, Kolhapur dismissing the Regular Civil Appeal No. 391 of 2013 filed by the appellant and confirming the judgment and decree dated 7th September 2013 passed by the learned 3rd Joint Civil Judge, Junior Division, Kolhapur in Regular Civil Suit No. 672 of 2012 filed by the respondents herein (original plaintiffs) inter alia praying for possession of the suit property i.e three rooms admesuring 12 x 7, 10 x 7 and 14 x 7 of the south north building out of C.S. No. 1827-A/2, A-ward, Tatakadil Talim, Shivaji Peth, Kolhapur. The parties in this judgment are described as per their original status in the suit filed by the original plaintiffs before the learned trial Judge.

2. By consent of parties, the following substantial questions of law are formulated as under:-

(i) Whether the issue as to question of valuation of the subject matter of the suit ought to have been adjudicated upon by the Court of the learned Civil Judge, Senior Division, Kolhapur in which the original suit was instituted in view of Section 14 (1) of the Maharashtra Court Fees Act, 1959?

(ii) Whether Article 65 or Article 64 or Article 113 of Schedule I appended to the Limitation Act, 1963 would attract in the present case?

3. Some of the relevant facts for the purpose of deciding this second appeal are as under:-

4. It was the case of the plaintiffs that the suit property was held by the father of the plaintiffs namely Sadashiv Ramchandra Kulrkarni. Father of the plaintiffs expired on 12th August 2005. After demise of the said Sadashiv Ramchandra Kulkarni, the plaintiffs being his legal heirs had become owners of the suit property. The plaintiff no.1 is son, the plaintiff no.2 is wife and the plaintiff no.3 is daughter of the said Sadashiv Ramchandra Kulkarni. Father of the plaintiffs had filed Regular Civil Suit No. 971 of 1994 in the Court of 3rd Joint Civil Judge, Junior Division, Kolhapur. The said suit was filed by the father of the plaintiffs came to be decreed. The defendant was a party to the suit and preferred a Regular Civil Appeal No. 379 of 2000 before the first appellate Court. On 14th October, 2002, the first appellate Court allowed the said appeal. It is not in dispute that one of the other parties to the said proceedings impugned the said judgment and decree dated 14th October 2002.

5. In the said judgment and decree passed by the first Appellate Court, the learned 4th Additional District Judge, Kolhapur held that there was no relationship of landlord and tenant between the defendant and father of the plaintiffs. The defendant in the said suit had alleged that as per the agreement between him and the father of the plaintiffs, the suit property was mortgaged. The said defence of the defendant was not accepted by the 4th Additional District Judge in the said judgment and decree dated 14th October, 2002. Father of the plaintiffs during his life time did not take any action against the defendant. It was the case of the plaintiffs that after the plaintiffs became owners after demise of the father, the plaintiffs on several occasions had requested the defendant to vacate the suit property but the defendant on one pretext or the other failed to vacate the suit property.

6. On 6th January 2010, the plaintiffs had issued a notice to the defendant calling upon him to hand over possession of the suit property. The defendant replied to the said notice and refused to hand over possession of the suit property. The plaintiffs thereafter filed a suit (Regular Civil Suit No. 672 of 2012) in the Court of 3rd Joint Civil Judge, Junior Division, Kolhapur inter alia praying for possession of the suit property and cost.

7. The defendant filed a written statement and resisted the suit on various grounds. The learned trial Judge framed eight issues for adjudication. The parties led documentary as well as the oral evidence in the said proceedings. By the

judgment and decree dated 7th September, 2013, the learned trial Judge decreed the said suit and directed the defendant to hand over vacant possession of the suit property to the plaintiffs within three months from the date of the said order and directed to pay cost.

8. Being aggrieved by the said judgment and decree dated 7th September, 2013, the defendant preferred an appeal (Regular Civil Appeal No. 391 of 1993) in the Court of District Judge-2, Kolhapur. The learned District Judge-2, Kolhapur formulated eight points for determination and passed a judgment and decree on 20th January 2016 and dismissed the said Regular Civil Appeal No. 391 of 1993 filed by the defendant and confirmed the decree and judgment dated 7th September 2013 passed by the learned trial Judge. This judgment and decree dated 20th January 2016 passed by the learned District Judge-2, Kolhapur has been impugned by the defendant in this second appeal filed under Section 100 of the Code of Civil Procedure, 1908.

9. It is submitted by the learned counsel for the defendant that the defendant had specifically raised an issue in the written statement filed by the defendant in respect of the valuation of the suit property made by the plaintiffs and had disputed the correctness of the said valuation of the suit made by the plaintiffs in the plaint. He submits that the suit was initially filed in the Court of the learned Civil Judge, Senior Division, Kolhapur. In view of the change of pecuniary jurisdiction to entertain the suit by the Court of the learned 3rd Joint Civil Judge, Junior Division, Kolhapur. He submits that the suit was initially filed in the Court of Civil Judge, Senior Division, Kolhapur in view of Section 14 (1) of the Maharashtra Court Fees Act, 1959 and thus the issue in respect of valuation of the subject matter of the suit which was specifically raised by the defendant in the written statement ought to have considered by the Court of the learned Civil Judge, Senior Division Kolhapur at the threshold and not by the Court of the learned 3rd Joint Civil Judge, Junior Division, Kolhapur after the said suit was assigned to the said Court. He submits that the entire decree passed by the learned 3rd Joint Civil Judge, Junior Division, Kolhapur was thus vitiated. It is submitted that it was a statutory duty of the learned trial Judge in whose Court the suit was initially filed to determine the issue of valuation of the subject matter of the suit in view of Section 14 (1) of the Maharashtra Court Fees Act, 1959.

10. In support of the aforesaid submission, the learned counsel for the defendant placed reliance on the judgment of this Court in the case of M/s. Shriji Builders through its partner Mrs. Anusuyaben Rasiklal Gangani & Ors. v. M/s. Wibro Construction Company through its Proprietor Mr. K. Abdulla & Anr., reported in 2004 Vol. 106 (4) Bom. L.R. 704 and more particularly paragraphs 6 to 12 thereof.

11. The next submission of the learned counsel for the defendant is that the suit filed for possession by the plaintiffs was barred by law of limitation. It is submitted that Regular Civil Suit No. 971 of 1994 which was filed by the father of

the plaintiffs for possession on the ground of landlord and tenant relationship under the provisions of the Bombay Rent Control Act came to be dismissed by the First Appellate Court in Regular Civil Appeal No. 379 of 2000 on 14th October, 2002. He submits that the second suit filed by the plaintiffs for possession against the defendant was admittedly instituted on 2nd March, 2010 on the ground that the defendant was alleged to have trespassed in the suit premises after the decision of the Regular Civil Appeal No. 379 of 2000.

12. It is submitted that admittedly the earlier suit was filed by the father of the plaintiffs on 1st October 1994. The cause of action for filing the second suit also had accrued on 1st October 1994 and not when the appeal filed by the defendant came to be allowed or when the father of the plaintiffs died or when the notice of possession was issued by the plaintiffs after demise of the father of the plaintiffs and the defendant refusing to vacate the suit premises. He submits that cause of action once having accrued on 1st October, 1994 itself, it did not stop. It is submitted that the plaintiffs not having prosecuted the suit in good faith and with due diligence, the plaintiffs were not entitled to invoke Section 14 of the Limitation Act, 1963. In support of the submission, learned counsel for the defendant placed reliance on the judgment of the Supreme Court of the Rabindra Nath Samuel Dawson v. Sivkasi & Ors., reported in (1973) 3 SCC 381 and in particular paragraph 4 thereof. Learned Counsel also placed reliance on the judgment of the Supreme Court in the case of Madhavrao Narayanrao Patwardhan, the State of Bombay v. Ram Krishna Govind Bhanu & Ors., reported in AIR 1958 SC 767 and in particular paragraphs 7 & 8 thereof.

13. It is submitted by the learned counsel for the defendant that Article 65 of the Schedule to the Limitation Act, 1963 is not applicable. The defendant had not claimed any adverse possession of the suit property. He submits that the onus was on the plaintiffs to show that the defendant had claimed adverse possession. He submits that no finding has been rendered by any of the Courts below as to why Article 65 of the Schedule to the Limitation Act, 1963 was attracted.

14. Learned Counsel for the defendant placed reliance on the judgment of the Supreme Court in the case of H. Siddiqui (dead) by Lrs. v. A. Ramalingam, reported in 2011 (4) Mh. L.J. 88 AIR 2011 SC 1492 and in particular paragraph 18 thereof in support of his submission that it is mandatory for the appellate Court to independently assess the evidence of the parties and consider the relevant points which arise for adjudication and the bearing of the evidence in those points. He submits that in this case, the first appellate Court, however, has not considered the evidence independently and has confirmed the findings of the learned trial Judge in to. He submits that the impugned judgment and decree passed by the first appellate Court is contrary to the provisions of Order 41, Rule 31 of the Code of Civil Procedure, 1908.

15. Mr. Narvankar, learned counsel for the plaintiffs, on the other hand, invited my attention to the written statement filed by the defendant and would submit that the relationship of the landlord and the tenant was specifically denied by the

defendant in his written statement. He also invited my attention to the averments made in the plaint in support of the submission that the cause of action had arisen when the defendant refused to hand over possession of the suit property upon receipt of the notice dated 6th January 2010. He submits that the suit was filed on 2nd March 2010 and was thus within the period of limitation prescribed under the provisions of the Schedule to the Limitation Act, 1963. He submits that issue of limitation has been dealt with by both the Courts below in a great detail and have rightly rejected the said plea of limitation in the impugned judgments and decrees passed by two Courts below. He submits that the defendant had urged before the learned trial Judge that he was licensee of the plaintiffs.

16. Learned Counsel for the plaintiffs also invited my attention to the findings recorded by the learned trial Judge on the issue of limitation and more particularly in paragraph 40 of the judgment and decree passed by the learned trial Judge. It is submitted by the learned counsel for the plaintiffs that in support of the plea of "gratuitous licensee" raised by the defendant in the written statement, he did not produce any license agreement. The learned trial Judge as well as the First Appellate Court have rightly rejected the said plea of the defendant.

17. It is submitted by the learned counsel for the plaintiffs that plea of jurisdiction or there being no cause of action raised by the defendant in the written statement was totally vague and was only a passing reference. He submits that the learned trial Judge thus was not required to frame any specific issue thereon. In support of this submission, learned counsel for the plaintiffs placed reliance on the judgment of the Supreme Court in the case of Maria Margarida Sequeira Fernandes and Ors. v. Erasmo Jack De Sequeira (dead) through Lrs., reported in (2012) 5 SCC 370 :2012 (3) AIR Bom R 857) and more particularly on paragraphs 53, 71 to 74 and 77 thereof.

18. In so far as the issue raised by the defendant that the objection in respect of valuation of the suit claim could not have been decided by the learned Civil Judge, Junior Division and ought to have been decided by the learned Civil Judge, Senior Division is concerned, it is submitted by the learned counsel that the suit which was originally filed before the learned Civil Judge, Senior Division was transferred to the learned Civil Judge, Junior Division in view of pecuniary jurisdiction and thus that issue was rightly decided by the learned Civil Judge, Junior Division. He distinguishes the judgment of this Court in the case of M/s. Shriji Builders through its partner Mrs. Anusuyaben Rasiklal Gangani and Ors. (supra) on the ground that the facts before this Court were totally different and are clearly distinguishable.

19. Learned counsel for the plaintiffs also distinguishes the judgments of the Supreme Court in the cases of H. Siddiqui (dead) by Lrs. A Ramalingam (supra), Madhavrao Narayanrao Patwardhan & Anr. (supra) and Rabindra Nath Samuel Dawson (supra) on the ground that the plaintiffs were prosecuting the earlier suit

in good faith and with due diligence. He submits that the two Courts below were thus right in applying the provisions of Section 14 of the Limitation Act, 1963. He submits that the learned District Judge, Kolhapur in Regular Civil Appeal No. 379 of 2000 filed by the defendant herein in the earlier round of litigation had specifically rendered a finding that there was no privity of contract of tenancy between the plaintiffs and the defendant in respect of the suit property. The defendant had failed to prove his contention that the plaintiffs had mortgaged the property of their father. The plaintiffs had failed to prove that the defendant was their tenant in respect of the suit premises and that there was privity of contract of tenancy between the plaintiffs and the defendant in respect of the suit property. He submits that the first appellate Court in the said judgment and decree has held that the provisions of Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 were not attracted in the instant case and consequently, the said Court did not pass any decree for eviction against the defendant under Section 28 of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 though the plaintiffs had succeeded in proving their reasonable and bona fide need of the suit premises.

20. It is submitted that the learned Additional District Judge by the said judgment and decree had allowed the appeal filed by the defendant with such finding recorded therein and dismissed the suit filed by the original plaintiff. It is not in dispute that the said order passed by the Additional District Judge, Kolhapur on 14th October 2002 was not challenged by any of the parties to the said suit and thus the findings rendered by the first appellate Court in the said judgment and decree attained finality.

21. Mr. Patil, learned Counsel for the defendant in his rejoinder arguments distinguishes the judgments relied upon by the learned counsel for the plaintiffs on the ground that the defendant had raised various pleas with details and particulars.

Reasons And Conclusions:-

22. The learned trial Judge framed six issues in the impugned judgment and decree. Both the parties had led oral and documentary evidence before the learned trial Judge. The learned trial Judge held that the plaintiffs had proved that the defendant was in unauthorised possession of the suit property. The said suit was not barred by res judicata. It is also held that the plaintiffs were entitled to exclusion of time under Section 14 of the Limitation Act, 1963. The plaintiffs were entitled to seek possession of the suit property from the defendant. The suit claim was properly valued by the plaintiffs in the plaint. It is also held that the learned trial Judge had pecuniary jurisdiction to entertain, try and dispose of the suit filed by the plaintiffs.

23. A perusal of the said judgment and decree passed by the learned trial Judge clearly indicates that the learned trial Judge has discussed each and every issue framed in a great detail and has also considered the oral and documentary

evidence led by both the parties. The learned trial judge has also considered the several judgments referred to and relied upon by both the parties and have rendered various findings of facts.

24. Learned District Judge-2, Kolhapur by judgment and decree dated 20th January 2016 dismissed the Regular Civil Appeal No.391 of 2013 filed by the defendant and confirmed the judgment and decree dated 7th September 2013 passed by the 3rd Joint Civil Judge, Junior Division, Kolhapur in Regular Civil Suit No.672 of 2012. A perusal of the said judgment and decree passed by the first appellate Court indicates that the first appellate Court formulated eight points for determination.

25. In so far as the issue whether the learned Civil Judge, Junior Division had jurisdiction to decide the suit is concerned, it is held by the first appellate Court that the plaintiffs had originally filed the suit in the Court of the learned Civil Judge, Senior Division, Kolhapur. In the written statement and more particularly paragraph 11, the defendant had raised an objection as to valuation of the suit claim and had filed an application (exhibit-51). It was the case of the defendant that the decision as to valuation taken by the 3rd Joint Civil Judge, Junior Division, Kolhapur was not in accordance with Section 14(1) of the Maharashtra Court Fees Act, 1959 read with paragraph 233 of the Civil Manual, Volume I. The suit which was filed in the Court of the learned Civil Judge, Senior Division, Kolhapur was allotted to the Court of the learned Civil Judge, Junior Division. It was urged by the defendant that since the plaintiffs had filed a suit in the Court of the learned Civil Judge, Senior Division and an objection as to the valuation having been raised, the learned Civil Judge, Senior Division was bound to decide the objection as to the valuation and not the Court of the learned Civil Judge, Junior Division merely because the suit was allotted to it.

26. After considering the submission of both the parties and after adverting to various judgments relied upon by both the parties, the first appellate Court on this issue held that the suit was valued by the plaintiffs for the purpose of jurisdiction and Court fees @ Rs.2 lacs. The said suit was allotted to the Joint Civil Judge, Senior Division in view of the fact that jurisdiction of the learned Civil Judge, Junior Division was upto Rs.1 lac. The jurisdiction of the learned Civil Judge, Junior Division was subsequently raised from Rs.1 lac to Rs.5 lacs in the year 2012 and thus the suit came to be transferred from the Court of the learned Civil Judge, Senior Division, Kolhapur to the Court of the learned Civil Judge, Junior Division as per the order dated 20th January 2012. The said transfer was effected in view of the order passed by the 2nd Joint Civil Judge, Senior Division, Kolhapur below Exhibit-1. Learned Civil Judge, Senior Division while passing the said order had considered the letter dated 5th January 2012 issued by the High Court and the letter dated 9th January 2012 issued by the District Court relating to the transfer of the pending suit to the appropriate Court having jurisdiction in view of enhancement of the pecuniary jurisdiction of the Court of the learned Civil Judge, Junior Division.

27. It is not in dispute that the defendant had filed an application under Order 7, Rule 11 (d) of the Code of Civil Procedure, 1908. By an order dated 20th January 2011, the learned Civil Judge, Senior Division rejected the said application. The defendant thereafter filed another application and had raised an issue about valuation of the suit and pecuniary jurisdiction. The said application was allowed by the Court. Both the parties were given an opportunity to lead evidence on the issue relating to valuation of the suit and pecuniary jurisdiction. The said issue had been considered by the learned trial Judge while deciding issue nos.5 and 6. The learned trial Judge also considered the oral evidence of Mr. Atul Sadashiv Kulkarni who had stated as to how the said suit was valued and market value was derived. The plaintiffs had also examined the Government Approved Valuer who had submitted his valuation report. The defendant did not examine himself on the point of valuation but filed Index II extract.

28. The first appellate Court considered the fact that the plaintiffs had claimed possession of three rooms only. The defendant had filed an application (exhibit-11) but did not raise the point of valuation and pecuniary jurisdiction and accepted the jurisdiction of the said Court till the end and when the evidence on all issues had been adduced by both the parties. The application (exhibit-51) had been filed belatedly. The trial Court had rendered an opportunity to both the parties. After considering the evidence and the submissions made across the bar by both the parties, the learned trial Judge held that the valuation of the suit property was made properly by the plaintiffs. In my view, the first appellate Court thus rightly rejected this contention raised by the defendant by rendering detailed reasons in the impugned judgment and decree.

29. A perusal of the record clearly indicates that the suit was initially in the Court of Civil Judge, Senior Division on the basis of the valuation of the suit of Rs.2 lacs made by the plaintiffs in the plaint for the purpose of jurisdiction and court fees. The jurisdiction of the Civil Judge, Junior Division was admittedly raised from Rs.1 lac to Rs.5 lacs in the year 2012. The learned second Joint Civil Judge, Senior Division, Kolhapur after referring to the order passed by the High Court dated 5th January, 2012 and the letter of the District Court dated 9th January, 2012 withdrew the said suit from the file of the 2nd Joint Civil Judge, Senior Division, Kolhapur and transferred the said suit to the Court of the learned Civil Judge, Junior Division, Kolhapur. It is not in dispute that the defendant had filed an application under Order 7, Rule 11 (d) of the Code of Civil Procedure, 1908, raising an issue of jurisdiction which was rejected by the learned Civil Judge, Senior Division, Kolhapur by an order dated 20th January, 2011.

30. The defendant also filed an application raising an issue of valuation of the suit and pecuniary jurisdiction. The said application was allowed by the Court and both the parties were given opportunities to lead evidence on the issue relating to the valuation and pecuniary jurisdiction. The plaintiff no.1 examined the Government approved valuer to prove the contents of the valuation report. The defendant however did not examine any witness on the issue of valuation. In my

view, the two Courts below thus rightly rendered a finding on the issue of valuation and rightly rejected the contention of the defendant.

31. Insofar as the judgment of this Court in case of M/s.Shriji Builders (supra) relied upon by the learned counsel for the defendant is concerned, a perusal of the said judgment indicates that the plaintiffs in that suit had valued the suit at Rs.12,000/- though the plaintiffs had challenged the validity of a sale deed, which was valued at Rs.50 lacs. The Clerk Incharge of the allotment of the suit, allotted the said suit to the file of the learned Civil Judge, Junior Division on the basis of the fact that the plaintiffs had valued the subject matter of the suit below Rs.1 lac and in view of section 20 of the Goa Civil Courts Act, 1965. The defendant raised an objection to the valuation of the suit and prayed that the plaintiffs be directed to correct the value of the plaint to Rs.50 lacs. The defendant in the alternate prayed for rejection of the plaint under 7 rule 11(d) of the Code of Civil Procedure, 1908.

32. The learned Civil Judge, Junior Division in that matter rejected the plaint under Order 7, Rule 11 (d) of the Code of Civil Procedure, 1908. The plaintiffs had conceded before the Court that they had under valued the suit. The trial Court also rendered a finding that the plaintiffs had under valued the suit. This Court accordingly held that the requirement of section 12 of the Court Fees Act, 1870 could not have been ignored because of ministerial decision to place the suit before the learned Civil Judge, Junior Division. In these facts, this Court held that the learned Civil Judge, Junior Division to which the suit was allotted by the Clerk Incharge for allotment of suit could not have decided the issue of valuation but the said issue ought to have been decided by the learned Civil Judge, Senior Division. However, in the facts of this case, pecuniary jurisdiction of the learned Civil Judge, Junior Division was enhanced and the suit was transferred pursuant to the decision taken by this Court and by the District Court. The application under Order 7, Rule 11 (d) of the Code of Civil Procedure, 1908 filed by the defendant was rejected. In my view, the judgment of this Court in case of M/s.Shriji Builders (supra) thus would not assist the case of the defendant and is clearly distinguishable in the facts and circumstances of this case.

33. Insofar as the issue of limitation raised by the defendant is concerned, a perusal of the judgment and decree passed by the learned District Court, Kolhapur in Regular Civil Appeal No.379 of 2000, which was filed by the defendant herein arising out of the decree passed by the learned Civil Judge, Junior Division, Kolhapur in the suit for possession filed by the father of the plaintiff no.1 clearly indicates that it was the case of the father of the plaintiff no.1 in that suit that the defendant was a tenant of the suit premises and had not paid the rent. It was also urged by the father of the plaintiff no.1 in that suit that the premises were required bona fide by the father of the plaintiff no.1. It was pleaded by the defendant that the plaintiff no.1 had mortgaged the suit property to his father. Learned 4th Additional District Court, while allowing the appeal filed by the defendant herein rendered specific finding that the plaintiffs

therein had failed to prove the relationship of the landlord and the tenant between him and the defendant. The defendant also had failed to prove that the plaintiff no.1 therein had mortgaged the suit property to his father.

34. It is not in dispute that the father of the plaintiff no.1 did not challenge the said decree holding that he had failed to prove the relationship of the landlord and the tenant between him and the defendant.

35. A perusal of the order passed by the first appellate Court, which is the subject matter of this appeal clearly indicates that the first appellate Court has held that though the relief in both the suits were for possession of the suit property by the owner, the cause of action in respect of both the suits were different. It is held that after the demise of the father of the plaintiff no.1 when the plaintiff no.1 became the owner of the suit property, he had called upon the defendant to hand over possession of the suit property. It was the case of the plaintiffs that the possession of the defendant in respect of the suit property was adverse to the title of the plaintiffs and cause of action arose when the learned District Judge in the appeal filed by the defendant in the earlier round of litigation rendered a finding that there was no relationship of the landlord and the tenant between the parties and the defendant had also having failed to prove that the property was mortgaged by the plaintiff no.1 in favour of his father. The learned trial Judge as well as the first appellate Court held that Article 65 of the Schedule to the Limitation Act, 1963 would be attracted and the suit for possession could be filed within 12 years from the date of decree passed by the learned District Judge in Regular Civil Appeal No.379 of 2000. For the reasons recorded aforesaid, I do not find any infirmity with the order passed by the learned trial Judge as well as the first appellate Court insofar as the issue of limitation is concerned.

36. Insofar as the judgment of the Supreme Court in case of Rabindra Nath Samuel Dawson (*supra*) and in case of Madhavrao Narayanrao Patwardhan (*supra*) relied upon by the learned counsel for the defendant in support of his submission that the plaintiffs had not satisfied the conditions of section 14 of the Limitation Act, 1908 and the earlier proceedings not having been filed in good faith and not having been prosecuted with due diligence is concerned, in my view since the cause of action in both the suits were different, there is no merit in this submission of the learned counsel for the defendant. The first appellate Court rightly held that the cause of action for filing the second suit for possession was based on Article 65 of the Schedule to the Limitation Act and the suit could be filed 12 years from the date of the decree passed by the learned District Court in the earlier round of litigation.

37. Be that as it may, since the case of the plaintiffs in the earlier suit was that the defendant was their tenant and the said plea was not accepted by the first appellate Court in the said decree, the plaintiffs were entitled to seek exclusion of time under section 14 of the Limitation Act, 1963, the plaintiffs having prosecuted the said proceedings in good faith and with due diligence. The

judgment of the Supreme Court referred to aforesaid thus would not assist the case of the defendant.

38. Insofar as the first substantial question of law formulated by this Court in paragraph 2 of the aforesaid judgment is concerned, in my view the said civil suit filed by the original plaintiffs having been transferred to the Court of the learned Civil Judge, Junior Division, Kolhapur in view of the enhancement of the pecuniary jurisdiction pursuant to the directions issued by this Court and the District Court, the said issue is answered in negative. The issue regarding valuation of the suit claim has been rightly decided by the learned Civil Judge, Junior Division, Kolhapur.

39. Insofar as the second substantial question of law formulated by this Court is concerned, in my view, Article 65 of Schedule-I Appended to the Limitation Act, 1963 would be attracted in the present case. Question is answered accordingly.

40. In my view, both the Courts below have rendered the findings of fact which are concurrent and being not perverse, cannot be interfered with by this Court in this second appeal filed under section 100 of the Code of Civil Procedure, 1908. The appeal is devoid of merits.

41. I therefore, pass the following order :-

- a) Second Appeal No.453 of 2016 is dismissed;
- b) In view of dismissal of Second Appeal No.453 of 2016, Civil Application No.920 of 2016 does not survive and is accordingly dismissed;
- c) There shall be no order as to costs.

42. At this stage, Mr. Patil, learned counsel appearing for the appellant seeks stay of the operation of the execution of the impugned decree as well as the order passed by this court today for a period of eight weeks from today. Mr. Narvankar, learned counsel for the respondents states that his client will not execute the impugned decree passed by the learned trial judge for a period of six weeks from today. Statement is accepted.

43. If any Special Leave Petition is filed by the appellant, copy of the papers and proceedings of the said Special Leave Petition and the notice thereof shall be served upon the respondents in advance.