

# Salim D. Agboatwala vs Shamalji Oddhavji Thakkar on 17 September, 2021

**Equivalent citations: AIRONLINE 2021 SC 731**

**Author: V. Ramasubramanian**

**Bench: V. Ramasubramanian, Hemant Gupta**

REPORTAB

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5641 OF 2021  
(@ Special Leave Petition (C) No.26441 of 2014)

SALIM D. AGBOATWALA AND ORS.

... Appe

Versus

SHAMALJI ODDHAVJI THAKKAR AND ORS.

... Responde

JUDGMENT

V. Ramasubramanian, J.

1. Leave was granted on 07.09.2021.

2. Their plaint having been rejected by the trial court under Order VII Rule 11 (d) of the Code of Civil Procedure, 1908, and the said rejection having been confirmed by the High Court in a first appeal, the plaintiffs have come up with the above appeal.

3. We have heard Mr. Kevic Setalvad, learned senior advocate appearing for the appellants and Mr. Shekhar Naphade, learned Senior Advocate and Mr. Aniruddha Joshi, learned Advocate appearing for the contesting respondents.

4. A group of 13 persons, claiming to be the legal representatives and successors in title to the estate of one Haji Ali Mohammed Hajee Kassam Agboatwala, filed a civil suit in S.C. Suit No.2343 of 1987 on the file of the City Civil Court at Bombay. The reliefs prayed for in this suit are as follows:□“The Plaintiffs, therefore, pray that:

(a) It be declared that the judgment and order dated 28 th November 1963 passed by A.L.T. Borivali, Bombay Suburban District, in Tenancy Case No.32□G/65□63 Dahisar, Part of Exhibit 'F' hereto, holding Defendant No. 1 to be 'deemed Purchaser' of the suit land bearing Survey No.216, Hissa No.4□A bearing C.t.S. No.1879, of village Dahisar Taluka Borivali, Bombay suburban District is null and void, inoperative in law and not binding upon the plaintiffs;

(b) It be declared that Certificate issued by A.L.T. Borivaly, under Section 32□M of the Tenancy Act, part of Exhibit 'F' to this Plaint, declaring Defendant No.1 as 'deemed purchaser' of the suit land bearing Survey No.216, Hissa No.4□A, bearing C.T.S No.1879 of village Dahisar Taluka Borivali, Bombay Suburban District is null and void inoperative in law and not binding upon the Plaintiffs;

(c) It be further declared that Defendant Nos. 1 and 2 and person claiming through and under the said Defendants are trespassers on the suit land bearing Survey No.216, Hissa No.4□A, bearing C.T.S No.1879 of Village Dahisar Taluka Borivali, Bombay suburban District;

(d) The Defendant Nos. 1 and 2 be jointly and severally ordered and decreed to hand over to the Plaintiffs and/or to Defendant No.3 the Court Receiver, Vacant and peaceful possession o the Suit land Viz., Survey No.216, Hissa No.4□A bearing C.T.S No.1879 of village Dahisar, Taluka Borivali, Bombay suburban district;

(e) The Defendant Nos. 1 and 2 be ordered and decreed to pay to the Plaintiffs and/or Defendant No.3, the Court Receiver, such mesne profits as may be determined upon inquiry under Order 20 Rule 12 of the Civil Procedure Code from the date of the suit till the date of delivery of possession of the suit land, bearing Survey No.216 Hissa No.4□A, bearing C.T.S. No.1879 of Dahisar, Village Taluka, Borivali.

(f) That pending the hearing and disposal of the suit, Court Receiver, High Court, Bombay or some other fit and proper person be appointed as the Receiver of the suit land including the structure standing thereon under Order 40 Rule 1 of the Civil Procedure Code with all powers under the said Rule and he be directed to take possession of the suit land being Survey No.216, Hissa No.4□A, bearing C.T.S.No.1879 of Dahisar, Village Taluka, Borivali.

(g) That pending the hearing and disposal of the suit, the Defendant Nos. 1 and 2 their servants, agents, contractors, builders and/or developers and all persons claiming through or under the said Defendants be restrained by an order and induction of this Honourable Court from disposing of alienating, parting with possession of, encumbering by creating third party interest in any manner whatsoever, and/or carrying on construction work of any nature whatsoever upon the suit land or part thereof or any structure or part of the structure standing on the suit land i.e. Survey No.216, Hissas No.4□A, bearing C.T.S. No.1879 of village Dahisar,

Taluka Borivali in Bombay Suburban District.”

5. In brief, the claim of the plaintiffs in the aforesaid suit was that the person, to whom they claimed to have succeeded, died in the year 1946, leading to some of his heirs filing a suit for the administration of the estate left behind by him. The said suit being suit No.3415 of 1947 was filed on the original side of the High Court of Bombay. By a Judgment dated 30.06.1950, the High Court appointed a Receiver and he took over possession and management of the properties. According to the plaintiffs, certain sales through Agricultural Lands Tribunal and mutation in the revenue records were effected thereafter without the knowledge and behind the back of the heirs and legal representatives and that the plaintiffs came to know about the same, when they made an inspection of the records available with the Court Receiver. Therefore, the suit was filed primarily for setting aside an order passed by the Agricultural Lands Tribunal (for short “ALT”) in a tenancy case under Section 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short “the Act”) and for setting aside a sale certificate issued under Section 32M of the Act.

6. Since the order of the ALT passed under Section 32G of the Act was dated 28.11.1963 and the sale certificate issued under Section 32M was dated 23.07.1954, but the suit being S.C. suit No.2343 of 1987 was filed in March 1987, the second defendant in the suit which is a Cooperative Society, took out a notice of motion for the rejection of the plaint under Order VII Rule 11(d) CPC. It is relevant to note that this notice of motion was taken out, by the second defendant, only in the year 2003, that is after 16 years of the institution of the suit.

7. The rejection of plaint was sought primarily on two grounds, namely, (a) that the suit filed in the year 1987 challenging the action of the competent authorities under the Act carried out way back in 1963 and 1964 was hopelessly barred by limitation; and (b) that in any case Section 85 of the Act bars the jurisdiction of Civil Court.

8. The City Civil Court Bombay, by an Order dated 16.04.2012 allowed the notice of motion and rejected the plaint on both the grounds raised by the second defendant.

9. Aggrieved by the said order, the plaintiffs filed a regular appeal in First appeal No. 948 of 2012. The appeal was dismissed by the High Court of Judicature at Bombay by a Judgment and decree date 26.02.2014. It is against the said judgment that the original plaintiffs 3, 4, 5, 6, 8, 9, 11, 12 and 13 have come up with the above appeal.

10. Insofar as the rejection of plaint on the ground of limitation is concerned, it is needless to emphasize that limitation is a mixed question of fact and law. It is the case of the appellants/plaintiffs that only after making inspection of the records in connection with the suit land available in the office of defendant No.3 (Court Receiver) that they came across the correspondence and documents relating to the transactions and that the proceedings before the ALT were collusive, fraudulent and null and void. The appellants/plaintiffs have even questioned the authority of the Court Receiver to represent them in the tenancy proceedings.

11. The above averments may or may not be true. But if the plaintiffs succeed in establishing the above averments, the issue of limitation cannot be put against the plaintiffs. Generally a party, who never had any notice of a particular proceeding before a quasi-judicial authority, is entitled to approach the Court upon gaining knowledge of the proceedings. Limitation cannot be put against such a party.

12. We are not dealing here with a case where notices were ordered to be issued, but were not or could not, be served on necessary and proper parties. We are dealing with a case where the plaintiffs assert in no uncertain terms that notices were never ordered to them nor served on them. Therefore, the answer to the issue regarding limitation, will depend upon the evidence with regard to the issuance and service of notice and the knowledge of the plaintiffs. Hence, the Trial Court as well as the High Court were not right in rejecting the plaint on the ground of limitation, especially in the facts and circumstances of this case.

13. As observed by this Court in *P.V. Guru Raj Reddy vs. P. Neeradha Reddy And Others*<sup>1</sup>, the rejection of plaint under Order VII Rule 11 is a drastic power conferred on the Court to terminate a civil action at the threshold. Therefore, the conditions precedent to the exercise of the power are stringent and it is especially so when rejection of plaint is sought on the ground of limitation. When a plaintiff claims that he gained knowledge of the essential facts giving rise to the cause of action only at a particular point of time, the same has to be accepted at the stage of considering the application under Order VII Rule 11.

14. Again as pointed out by a three member bench of this Court in *Chhotanben vs. Kiritbhai Jalkrushnabhai Thakkar*<sup>2</sup>, the plea regarding the date on which the plaintiffs gained knowledge of the essential facts, is crucial for deciding the question whether the suit is barred by limitation or not. It becomes a triable issue and hence the suit 1 (2015) 8 SCC 331 2 (2018)6 SCC 422 cannot be thrown out at the threshold.

15. Referring to a few averments contained in the plaint, it is contended by the learned counsel for the respondents that the appellants had constructive notice of the proceedings under Section 32-G and the sale certificate issued under Section 32-M. In support of such a plea, the learned counsel relies upon the following decisions, *Ram Niwas (Dead) vs. Bano (Smt.) & Ors.*<sup>3</sup>; *Rajasthan Housing Board vs. New Pink City Nirman Sahakari Samiti Limited & Anr.*<sup>4</sup>; *Murlidhar Bapuji Valve vs. Yallappa Lalu Chaugule*<sup>5</sup>; *Parvathammal vs. Sivasankara Bhattar And Others*<sup>6</sup>.

16. But a defendant in a suit cannot pick up a few sentences here and there from the plaint and contend that the plaintiffs had constructive notice of the proceedings and that therefore limitation started running from the date of constructive notice. In fact, the plea of constructive notice is raised by the respondents, after asserting positively that the plaintiffs had real knowledge as well as actual notice of the proceedings. 3 (2000) 6 SCC 685 4 (2015) 7 SCC 601 5 (1994) SCC Online Bom 72 6 1951 SCC Online Mad 23 In any case, the plea of constructive notice appears to be a subsequent invention.

17. The decision in *Ram Niwas* (supra) which revolved around Explanation II under Section 3 of the Transfer of Property Act, 1882, cannot go to the rescue of the respondents. Section 3 of the Transfer of Property Act, 1882, provides that a person is said to have notice of a fact, (i) either when he actually knows that fact; or (ii) when, but for willful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it. The relevant part of Section 3 together with Explanation II thereunder reads as follows:

“a person is said to have notice” of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it Explanation II.—Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.”

18. The 2 ingredients of the relevant part of Section 3 providing as to when “a person is said to have notice”, are matters of fact to be established through evidence. The respondents in this case cannot even fall back upon Explanation II which holds that a person acquiring an immovable property will be deemed to have notice of the title of a person in actual possession thereof. In this case, it was the Court Receiver who was in possession and management of the entire Estate at the time of the impugned proceedings and hence Explanation II cannot be used by the defendants.

19. The decision in *Rajasthan Housing Board* (supra) also reiterates the two ingredients of Section 3 of the Transfer of Property Act, 1882, and hence the same cannot be raised in an application under Order VII Rule 11. It should be pointed out at this stage that Section 32 (G) (1) of the Act contemplates a public notice in the prescribed form to be published in each village. It is not the case of respondents that the plaintiffs had real or constructive notice of the proceedings by virtue of such a public notice. It is not even known whether a public notice was ever published. Therefore, the plea of constructive notice raised with a view to sustain the plea of limitation cannot be accepted at the stage of dealing with an application for rejection of plaint.

20. Insofar as the bar of the jurisdiction under Section 85 is concerned, the Act contains a very strange provision, in section 85□A, the like of which is not found in many other statutes which contain provisions barring the jurisdiction of Civil Courts. It may be useful to extract Section 85 and 85A of the Act as follows:

“85. Bar of jurisdiction (1) No Civil Court shall have jurisdiction to settle, decide or deal with any question [(including a question, whether a person is or was at any time in the past a tenant and whether any such tenant is or should be deemed to have purchased from his landlord the land held by him)] which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal, a Manager, the Collector or the [Maharashtra Revenue Tribunal] in appeal or revision or the [Maharashtra Revenue Tribunal] in appeal or revision or the [State] Government in exercise of their powers of control.

(2) No order of the Mamlatdar, the Tribunal, the Collector or the [Maharashtra Revenue Tribunal] or the [State] Government made under this Act shall be questioned in any Civil or Criminal Court.

Explanation.— For the purposes of this section a Civil Court shall include a Mamlatdar's Court constituted under the Mamlatdar's Courts Act, 1906.

85A. Suits involving issues required to be decided under this Act (1) If any suit instituted in any Civil Court involves any issues which are required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issues under this Act (hereinafter referred to as the "competent authority"), the Civil Court shall stay the suit and refer such issues to such competent authority for determination.

(2) On receipt of such reference from the Civil Court, the competent authority shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate its decision to the Civil Court and such Court shall thereupon dispose of the suit in accordance with the procedure applicable thereto. Explanation.— For the purpose of this section a Civil Court shall include a Mamlatdar's Court constituted under the Mamlatdar's Courts Act, 1906."

21. Though Section 85(2) mandates that no order of the Mamlatdar, the Tribunal, the Collector or the State Government passed under the Act shall be questioned in any Civil or Criminal Court, the bar contained therein stands diluted to some extent under Section 85A.

22. Section 85A inserted by Bombay Act 13 of 1956 prescribes a two stage procedure for the Civil Court to follow, whenever a suit is instituted, despite the bar contained in Section 85. In the first stage, the Civil Court should stay the suit and refer the issues to the competent authority under the Act for determination. In the second stage, the Civil Court should dispose of the suit in accordance with the procedure applicable thereto, after receipt of the decision of the competent authority, to whom the issues were referred for a decision under the Act.

23. If the bar under Section 85(2) was absolute, the Civil Court would have no option except to dismiss the suit. If the bar of jurisdiction is absolute, the question of the Civil Court staying further proceedings in the suit, referring the issues for the adjudication of the competent authority under the Act and disposing of the suit after receipt of a decision from the competent authority, would not arise.

24. The City Civil Court as well as the High Court refused to follow the procedure prescribed by Section 85A of the Act, on the short ground that the same could be invoked only in cases where the issues covered by the Act have not already been settled, decided or dealt with by an authority competent under the Act to do so. Supporting the view taken by the Trial Court and the High Court, it is contended by Mr. Aniruddha Joshi, learned counsel for some of the contesting respondents that as against the orders passed under Section 32G and 32M, an alternative remedy of appeal is provided under Clauses (mb) and (n) of Subsection (1) of Section 74 of the Act. The Collector is the appellate authority under Section 74. Under Section 76A, the Collector even has suo motu power of

revision, even in cases where no appeal has been filed. Section 79 of the Act prescribes a period of 60 days as the limitation for filing an appeal or revision. Therefore, it is contended by Mr. Aniruddha Joshi, learned counsel that a party who suffered an order from the ALT and who chose not to challenge the same by way of an appeal or revision for a period of more than two decades, cannot resurrect his right to avail statutory remedies, first by filing a suit and then seeking recourse to Section 85□A. Reliance is placed in this regard by the learned counsel for the respondent, on the decision of the Bombay High Court in Vithoba Rama Randive vs. Dhairyasinhrao Bhayasaheb Ghatge and Ors.<sup>7</sup>

25. But the above contention of Shri Joshi overlooks an important facet of the case set up by the plaintiffs. According to the plaintiffs, the Estate was in the administration of the Court Receiver and that in collusion between the Court Receiver and the Revenue authorities, the sale as well as mutation took place without any notice to any of the interested parties. Collusion and fraud are the main planks on which the plaintiffs have built up their case. The question whether the order of the ALT and the sale certificate issued thereafter are the product of fraud and collusion, cannot be determined by the appellate or revisional authority under the Act. In any case it is contended by the learned counsel for the appellants that by virtue of Section 88□B(1)(d) of the Act, none of the provisions of the Act, except a few, are applicable, “to lands taken under management temporarily by the Civil, Revenue or Criminal Courts by themselves, or through receivers appointed by them, till the decision of the title of the rightful owners”. The 7 AIR 1972 Bombay 122 veracity of such argument has not been tested before the Trial Court or the High Court. We do not know whether the exemption under Section 88□B was raised at all by the appellants/plaintiffs. But it is a legal issue which goes to the root of the matter. Therefore, the Civil Court’s jurisdiction cannot be said to have been ousted completely. The Civil Court was obliged to see at least whether the appointment of a Receiver for the administration of the Estate of a deceased person would actually fall within the mandate of Clause(d) of Sub□section(1) of Section 88□B.

26. Therefore, we are of the considered view that the Trial Court as well as the High Court were clearly in error in rejecting the plaint under Order VII Rule 11(d). Hence, the appeal is allowed, the judgment and decree of the Trial Court as well as the High Court are set aside and the suit is restored to file. There will be no order as to costs.

.....J. (Hemant Gupta) .....J. (V. Ramasubramanian) NEW  
DELHI SEPTEMBER 17, 2021