

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
NAGPUR**

**ORIGINAL APPLICATION NO.879 OF 2018**

**DISTRICT : NAGPUR**

1. Smt. Kumud WD/O Pradeep Mandre. )  
Aged about 53 Yrs, Occu.: Housewife, )  
R/o. C/o. Gajanan Kamthakar, Near )  
Veterinary Hospital, New Koradi, )  
Tah. Kampthee, District : Nagpur. )
2. Neharika D/O Pradeep Mandre. )  
Aged about 53 Yrs, Occu.: Housewife, )  
R/o. C/o. Gajanan Kamthakar, Near )  
Veterinary Hospital, New Koradi, )  
Tah. Kampthee, District : Nagpur. )...**Applicants**

**Versus**

1. The State of Maharashtra. )  
Through its Secretary, )  
Forest Department, Mantralaya, )  
Mumbai – 32. )
2. The Deputy Conservator of Forests. )  
Wardha Forest Division, Wardha, )  
Tah. & District : Wardha. )
3. Sarla D/O Mukamji Walvi. )  
(wrongly named as Sarla sd/o )  
Pradeep Mandre) )  
Aged about 53 years, )  
Occu.: Housewife, R/o. 43. H.B. )  
Estate, Sahakar Nagar, Khamla, )  
Nagpur. )
4. Ku. Sonali D/o Pradeep Mandre )  
(illegitimate Daughter of Pradeep )  
Mandre) )  
Aged about 33 years, )  
Occu.: Private, R/o. 43. H.B. )  
Estate, Sahakar Nagar, Khamla, )  
Nagpur. )
5. Suresh S/o Pradeep Mandre )

(illegitimate Son of Pradeep Mandre )  
Aged about 31 years, )  
Occu.: Private, R/o. 43. H.B. )  
Estate, Sahakar Nagar, Khamla, )  
Nagpur. ) **...Respondents**

**Shri G.B. Hemke, Counsel for Applicant.**

**Shri M.I. Khan, Presenting Officer for Respondents 1 & 2.**

**Shri P.V. Ghare, Counsel for Respondents 3 to 5.**

**CORAM : SHRI A.D. KARANJKAR, MEMBER-J**

**DATE : 21.01.2020**

### **JUDGMENT**

1. The Applicant No.1 is claiming to be legally wedded wife of deceased Pradeep Mandre and the Applicant No.2 is claiming that she is legitimate daughter of deceased Pradeep Mandre. Deceased Pradeep Mandre was in service of the Forest Department on the post of Range Forest Officer. When deceased Pradeep was serving as RFO at Karanja (Ghadge), he died in accident on 29.07.2000.

2. The dispute started between the present Applicants and Respondents 3 to 5. The contention raised by Respondents 3 to 5 that the Respondent No.3 was legally wedded wife of deceased Pradeep Mandre and Respondents 4 & 5 were issues of Respondent No.3 and deceased Pradeep. It seems that, as the Applicants and Respondents 3 & 4 were claiming the estate left behind deceased Pradeep, therefore, Succession Case No.98/2000 was filed by Respondents 3 to 5 in the Court of Civil Judge, Senior Division, Wardha. Vide Judgment (Annexure 'A-6'), the Petition was partly allowed and the Court directed to issue Succession Certificate in the names of Respondents 4 & 5. Being aggrieved by this order, the Respondent No.1 filed Civil Revision Application No.177/2004 before the Hon'ble Bombay High Court, Nagpur Bench and by order dated 02.03.2006 (Annexure 'A-8'), the Hon'ble High

Court allowed the Civil Revision Application and modified the order of Succession Certificate and directed to issue the same in favour of Respondents 2 to 5.

3. Succession Case No.256/2000 was filed by the present Applicants in the Court of Civil Judge, Senior Division, Nagpur but later on, it was withdrawn by the Applicants.

4. It is undisputed that the Regular Civil Suit No.2153/2000 was filed by the present Applicants for claiming relief of permanent injunction and for declaration of title that the present Applicants were the owners of the property left behind of deceased Pradeep. Both the Applicants were directed by the court to correct the valuation of the Suit, as declaration of ownership was claimed by them, but it was not done, consequently, the Court directed that it will proceed only with the prayer to grant perpetual injunction.

5. There is no dispute about the fact that the present Applicants thereafter filed Regular Civil Suit No.404/2005. In that Suit, the present Respondent No.3 was Defendant No.1 and present Respondents 1 & 2 were Defendant Nos.2 and 3. The learned Civil Judge, Senior Division, Nagpur delivered the Judgment on 24<sup>th</sup> March, 2008 and dismissed the Suit filed by the Applicants observing that the Suit was barred by limitation.

6. The Applicants preferred Regular Civil Appeal No.431/2008 and challenged the Judgment and decree in Regular Civil Suit No.404/2005. The ad-hoc District Judge No.3, Nagpur was pleased to allow the appeal and decreed the Suit. The present Respondent No.3 preferred 2<sup>nd</sup> Appeal No.414/2010 before the Hon'ble High Court. The 2<sup>nd</sup> Appeal was allowed by the Hon'ble High Court by Judgment dated 13<sup>th</sup> August, 2018 and the Judgment passed by the Trial Court was restored and the Civil Suit No.404/2005 was dismissed. After the Judgment in 2<sup>nd</sup> Appeal, the

Respondent No.2 wrote letter to the Applicants on 05.10.2018 and informed that the Succession Certificate was issued in favour of Respondent Nos.3 to 5 and the Suit filed by the Applicants was dismissed as per order in 2<sup>nd</sup> Appeal, consequently, the Applicants were not entitled to claim the estate left behind by deceased Pradeep and being aggrieved by this, the Applicants have approached this Bench.

7. The Respondent No.2 in this matter has filed reply which is at Page No.201 and the Respondents 3 to 5 have filed their reply which is at Page No.208 of O.A.

8. All the Respondents have resisted the application mainly on the ground that, as Competent Court has issued the Succession Certificate in favour of Respondents 2 to 5 holding that the Respondent No.3 was legally wedded wife of deceased Pradeep and Respondents 4 & 5 were his legitimate issues. All the Respondents have contended that the Civil Suit No 404/2005 for the declaration of title and ownership filed by the applicants is already dismissed by the Civil Court and that Judgment is confirmed in 2<sup>nd</sup> Appeal by the Hon'ble High Court, consequently, in these premises, the Applicants cannot be given any benefit. It is submitted that, as the Applicants are not recognized as legal heirs of deceased Pradeep, therefore, they do not have any right to claim the amounts in hands of Respondents 1 & 2. It is further submitted that only Respondents 3 to 5 are entitled to claim these amounts.

9. In the above background, the legal question arises whether the Applicants have right to claim the amounts in hands of Respondent No.2, in capacity of the legal heirs of deceased Pradeep Mandre.

10. The learned Counsel for the Applicants has submitted that in Regular Civil Suit No.404/2005, the learned Trial Court has recorded the finding on issue Nos.1 and 2 in affirmative. On issue No.1, the finding is recorded that the Applicant No.1 is legally wedded wife of deceased

Pradeep Mandre and Applicant No.2 is legitimate child of deceased Pradeep and the Trial Court also recorded finding on issue No.2 that the Applicants 1 and 2 were the legal heirs of deceased Pradeep and they were entitled for the securities in hands of Respondent No.2. The learned Counsel for the Applicants submitted that the 1<sup>st</sup> Appeal preferred by the Applicants was allowed by the learned Ad-hoc District Judge No.3, Nagpur. It is submitted that, though the 2<sup>nd</sup> Appeal No.414/2010 was allowed by the Hon'ble High Court, but the findings on issue Nos.1 and 2 are not set aside, consequently, the Respondents 1 & 2 are bound by the decree as the applicants are legal heirs of deceased Pradeep.

11. The argument advanced on behalf of Applicants is attractive, but in my opinion, the cognizance of this argument cannot be taken in view of the provisions under Section 3(1) of Limitation Act, 1963 which is as under:-

**“3. Bar of limitation**

(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.”

12. After reading Section 3 Sub-Section 1 of Limitation Act, it must be accepted that the provision in this Section is of mandatory nature, once finding is recorded that the Suit is barred by limitation, there is only way out that is dismissal of the Suit. After reading Section 3 Sub-Section 1, it appears that it is the duty imposed on the Court to dismiss the Suit even if the ground of limitation is not set up in defence. In legal parlance, it must be said that the Court can take cognizance of a Suit only when it is within limitation. If the Suit is barred by limitation, then there is a statutory injunction that the suit shall be dismissed as the Courts are prevented from taking cognizance of the Suit. In view of this principle, it must be examined what is the value of the findings recorded

on issue Nos.1 and 2 in RCS No.404.2005. Once it is held that the Suit was barred by limitation and bar under Order II Rule 2 of Civil Procedure Code was attracted and the Suit was barred under the provisions of Order II Rule 2 of CPC these findings goes to the root of the matter.

13. On Page No.9 of the Judgment delivered by the Hon'ble High Court in 2<sup>nd</sup> Appeal No.414/2010, in Paragraph No.7, the conclusion is drawn by the Hon'ble High Court, "Accordingly substantial question of law No.1 is answered by holding that the Suit filed by Respondents 1 & 2 herein was barred by the provisions of Order II Rule 2 of the CPC." The Hon'ble High Court in Paragraph No.9 of the Judgment held that the cause of action having been found to have accrued on 30.10.2000 and no relief on that basis having been sought, the Suit as filed on 11.02.2005 was clearly barred by limitation.

14. After reading the Judgment in RCS No.404/2005, it seems that the Trial Court recorded the specific finding on issue No.5 that as the Suit was barred by limitation, consequently, the Applicants were not entitled for relief of declaration and consequential reliefs, as prayed.

15. In view of the legal position, when Court has no jurisdiction to take cognizance of a Suit as barred by limitation, the Court has no jurisdiction even to record any finding on the issues. The issues were framed by the Trial Court on the basis of the pleadings, as per the legal norms as pleadings were complete, the Court was bound to frame issues as per the pleadings and to record its findings on all issues. This provision is made in the Code of Civil Procedure to avoid the inconvenience to the parties, if the finding on question of law regarding tenability of the suit is set aside by the Appellate Court. Therefore, in my opinion, as the finding on issues bar of limitation and bar under Order II Rule 2 of CPC were held against the Applicants and it was held that the Suit was not maintainable, the findings recorded by the Trial Court on other issues in favour of the Applicants have no meaning in eyes of law.

If the benefit of such findings is given to the Plaintiff whose Suit is dismissed for bar of limitation and the bar under order II Rule 2 C.P.C., then it will make the very provision of Section 3(1) of the Limitation Act and the bar under order II Rule 2 C.P.C. nugatory and meaningless. In view of this discussion, I hold that the Applicants cannot take the benefit of affirmative findings of issue Nos.1 & 2 recorded in RCS 404/2005 by the Trial Court.

16. Now position is that as the Succession Certificate is issued by the Competent Court in favour of Respondents 2 to 5, the Applicants do not have any legal title to the securities in hands of Respondent No.2, consequently, the Applicants have no right to claim the amounts in the hands of Respondent No.2. Hence, I pass the following order.

### **ORDER**

The Original Application stands dismissed with no order as to costs.

Sd/-  
**(A.D. KARANJKAR)**  
**Member-J**

\*Nagpur  
Date : 21.01.2020  
Dictation taken by :  
S.K. Wamanse.  
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