

Peerappa Vs. Basamma

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Court : Karnataka

Decided On : Jan-08-1981

Reported in : AIR1981Kant163

Judge : K.S. Puttaswamy, Adv.

Acts : [Limitation Act, 1963](#) - Sections 14 - Schedule - Article 116; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 105 and 107 - Order 41, Rule 23

Appeal No. : Second Appeal No. 1057 of 1974

Appellant : Peerappa

Respondent : Basamma

Advocate for Def. : M.M. Jagirdar, Adv.

Advocate for Pet/Ap. : J.S. Gunjal, Adv.

Judgement :

1. This appeal is by the defendant and is directed against the judgment and decree dated 25-7-1974 of the Principal Civil Judge, Gulbarga in R. A. No. 21 of 1974 reversing the judgment and decree dated 21-4-1973 of the Munsif, Chittapur in O. S. No. 25 of 1969.

2. As early as on 30-8-1966, the respondents/plaintiffs instituted O. S. No. 96/1 of 1966 in the Court of the Civil Judge, Gulbarga for recovery of possession of two

agricultural lands detailed in the plaint, past and future mesne profits from the defendants.

3. The plaintiffs alleged that the lands were originally owned by one Baswantappa alias Basappa and that on his death in about 1957 they had succeeded to his estate including the lands in dispute as his heirs. But, while so alleging, the plaintiffs did not seek for declaration of their title to the lands. On the other hand, they expressly confined their relief for recovery of possession only on the plea that the defendant had illegally and wrongfully taken their possession in 1955 and has continued to be in wrongful possession ever since then without delivering their possession, when demanded by them. The plaintiffs asserted that their suit Med within 12 years from the date of illegal possession of the defendant was in time (vide para 10 of the plaint). With a view to claim that that Court had pecuniary jurisdiction, the plaintiffs valued the lands & Re. 10,000/-.

4. In resisting the plaintiffs suit, the defendant, an illiterate harijan, did not dispute the plea of the plaintiffs. that the lands were originally owned by Baswantappa. The defendant alleged that Baswantappa initially inducted him to' the lands, as a tenant, 3 or 4 years prior to 1954 and thereafter sold the said lands to him for a sum of Rs 1,500/-. Proceeding further the defendant stated that on 4-4-1954 Baswantappa executed an agreement to sell, received a sum of Rs. 900/- on that day and the balance of Rs. 600/- thereafter. As regards the manner of completion of sale, the defendant pleaded that the same was completed by mutating the entries in the record of rights to, has name from the name of Gangawwa, a close relation of Baswantappa. Alternatively, the defendant pleaded that he had perfected his title by adverse possession, He also pleaded that he had effected various improvements to the lands. On the valuation of the lands and the jurisdiction of the Court to entertain the suit, he pleaded that the lands had been deliberately overvalued to confer jurisdiction on that Court and -the valuation being less than Rs. 10,000/- that Court had no jurisdiction to entertain and proceed with that suit.

5. On the above pleadings, the learned Civil Judge framed several issues, one of which was issue No. 1 relating to the jurisdiction of the Court which was treated as

a preliminary issue. On the evidence placed

by the parties, the learned Civil Judge, by his order dated 28-2-1969 (Ext.-D19) found that the plaintiffs had deliberately overvalued the lands and their value was very much less than Rs. 10,000/- and, therefore, order

ed the return of the plaint to the plaintiffs for presentation to proper Court. Without challenging the aforesaid order of the learned Civil Judge -in any legal proceeding, the plaintiffs, obtained the return of the plaint from the Court of the Civil Judge, Gulbarga oft 28-2-1969 and presented the same on 15-4-1969 in the Court of the Munsiff, Chittapur, valuing the suit for purpose of jurisdiction at Rs. 6,000/- where it was numbered as O. S. No. 25 of 1969. In that suit, the defendant again filed his written statement on 5-7-1969. While reiterating his earlier pleas, in his defence filed before the Civil Judge and alluding to the previous

proceedings as also to O. S. No. 102 of 1968 filed by the plaintiffs for a permanent injunction, the defendant pleaded that the plaintiffs or their predecessors-in-title were not in possession of the lands within 12 years next prior to their suit and, therefore, the suit Was clearly barred by time.

6. On the above pleadings, the learned Munsiff, on 17-7-1969, framed the following five issues :

(1) Whether the plaintiffs prove their possession of - the suit lands within 12years next before the suit?

(2) Whether the defendant proves that he has purchased the property on 4-4-1954 and has become the owner as contended in para 5 of the written statement?

(3) If not, whether the defendant has become the owner by adverse possession as alleged in the written statement?

(4) Whether the plaintiff is entitled to mesne profits and if yes at what rate ?

(5) To what relief, the plaintiff is entitled if any

7. Before the trial commenced, the plaintiffs filed 1. A. No. 4 on 13-11-1972 under Order 6. Rule 17 of the Code seeking the leave of the Court to amend their plaint in conformity with, their earlier application stated to have been made on 15-4-1969. On 22-11-1972, the plaintiffs also filed a memo setting out the proposed amendment which reads thus:

Memo of Proposed amendment

Para 10-A. 'The plaintiffs had filed originally the suit in the Court of the Civil Judge at Gulbarga in O.S No. 96/1 of 1966 on 30-8-1966. The plaint was returned by the Civil Judge's Court on 28-2-1969 for presentation to proper Court. Actual market value of the suit land was stated by the plaintiffs to be Rs. 10,000/-. After enquiry the Civil Judge held that it was less than Rs. 10,000/- and found that the suit was cognizable by this Court and returned the plaint. The plaintiffs were prosecuting the suit in the Civil Judge's Court at Gulbarga with due diligence and good faith and that the Court for defect of jurisdiction found that this Court has jurisdiction to try it . Therefore, the plaintiffs are entitled to exclusion of time from 30-8-1966 to 28-2-1969, a period during which -they were prosecuting the suit in the Court of the Civil Judge at Gulbarga'.

In I. A. No. 5 filed under O. 14, R. 5 of the Code on 13-11-1972, the plaintiffs sought for deletion of Issue No. 1 and for modification of Issue No. 2 as set out in that application. 1. A. Nos. 4 and 5 were opposed by the defendant. By two separate orders made on 5-12-1972, the learned Munsiff 'rejected the said applications. Without challenging the said interlocutory orders in revisions, the plaintiffs proceeded with the trial of the suit and -placed their evidence in support of their case.

8. On a consideration of the voluminous evidence placed by the parties, the learned Munsiff, by his judgment dated 21-4-1973 found all the material issues against the plaintiffs and dismissed their suit. In conformity with the said judgment, a decree was drawn up by the Court on 29-5-1973.

9. Aggrieved by 'the aforesaid judgment and decree of the learned Munsiff, the plaintiffs filed an appeal on 31-5-1973 in R. A.No; 21 of 1974 in the Court of the

Civil Judge, Gulbarga annexing a certified copy of the judgment and decree they had obtained from the trial Court. On the scrutiny of the appeal papers the office pointed out the plaintiffs was time-barred from the date of judgment excluding the time taken for obtaining the certified copy of the judgment. Unfortunately, the learned Civil judge without at any time specifically deciding the question of limitation raised by the office, heard arguments on 23-7-1974 and by his judgment dated 25-7-1974 allowed the said appeal and decreed the plaintiffs' suit as prayed for by them.

10. On 16-8-1979, Sabhahit, J. before whom the appeal was posted, found that the learned Civil Judge had allowed 1. A. No. 4 filed by the plaintiffs without giving an opportunity to the defendant to file his amended written statement and contesting that part of the case. In that view, Sabhahit, J. by his order of that date directed the, Munsiff to inquire into the application filed under Section 14 of the Limitation Act of 1963 (hereinafter referred to as the Act) to exclude the period from 30-8-1966 to 28-21069 and submit his finding on L A. No. 4. In pursuance of the said order, the parties appeared before 'the learned Munsiff, and placed their evidence on that application. On a consideration of the evidence placed before him, the learned Munsiff has recorded his finding on 30-11-1979 and has submitted the, same to this Court. As the finding of the learned Munsiff is against the plaintiffs, they have filed their objections to the same, which will be dealt by me in due course.

11 . Sri J. S. , learned counsel appearing in support of the appeal urged that the findings of the learned Civil Judge are erroneous in law and sought for restoring the judgment and decree of the learned Munsiff.

12. Sri Manobar Rao Jagirdar, learned counsel appearing for the respondents, supported the judgment of the learned , Civil Judge on the very grounds found by him, as also on other grounds that will be noticed by me in due course.

13. On an examination of the pleadings and the contentions urged before me, the points that arise for determination in this appeal are these: -

(1) Whether the first appeal filed by the plaintiffs before the Civil Judge, Gulbarga was in time or not ?

(2) Whether the plaintiffs' suit is based on title ?

(3) Whether the plaintiffs are entitled to exited the- time 'occupied from prosecuting their earlier suit in the Court of Civil Judge , Gulbarga that is from 30-8-1966 to 28-2-1969 under Section 14 of the Act ?

(4) Whether the plaintiffs' suit is barred by time ?

(5) Whether the defendant has perfected his title by adverse possession ?

Re: Point No. I

Whether the first appeal filed by the plaintiffs before the Civil Judge, Gulbarga was in time or not ?

14. Sri Gunjal urged that the appeal filed by the plaintiff before the Court of the Civil Judge, Gulbarga, as pointed out by the office in the order sheet itself, was barred by time and in the absence of an application for condonation of delay, the learned Civil Judge accepting the same should have dismissed the appeal in limine.

15. Sri Jagirdar urged that the decree was prepared and signed by the learned Munsiff on 29-5-1973 and a certified copy of the same was issued thereafter and the appeal filed on the basis of the certified copy of the decree furnished by the Court of the Munsiff was well in time.

16. As noticed earlier, though the learned Munsiff delivered his judgment on 21-4-1973, a decree in conformity with that judgment was actually drawn up by the office and was signed by him only on 29-5-1973.

17. On 23-4-1973 an application for a certified copy of the judgment and decree was made by the plaintiffs. On that application, the office called for additional folios on the same day and supplied a certified copy of the judgment on 14-5-1973. But, a certified copy of the decree was prepared and supplied to the plaintiffs on 29-5-1973 on the very day the decree was drawn up.

18. An appeal has to be filed against the decree and not against the judgment and, therefore, the plaintiffs lodged their appeal on 31-5-1973 before the Civil Judge annexing a certified copy of the judgment earlier obtained by them and the decree copy obtained by them on 29-5-1973.

19. Unfortunately the office has computed, the period of limitation for the appeal on the basis of the certified copy of the judgment' and not with reference to the certified copy of the decree produced by the plaintiffs. If the limitation for the appeal is computed with reference to the certified copy of the decree produced along with the appeal memo, as it should be in law, the appeal filed by the plaintiffs on 31-5-1973 is well in time and the noting made by the office to the contrary is clearly wrong. But, that does not mean the learned Civil Judge should not have examined this aspect and dealt with the same, which would have avoided any contention by the defendant before this Court. In this view, the appeal filed by the plaintiffs on 31-5-1973 was well in time and there is no merit in the contention of Sri Gunjal and I reject the same.

20. Before examining points Nos. 2 to 6, it is necessary to notice, that Section 96 of the Code under which the first appeal was filed does not place any restriction on the powers of the first appellate Court and the same is, therefore, co-extensive with the powers of the trial Court itself. Section 107 of the Code generally specified the powers of an appellate Court. Even in the absence of restrictions placed by the statute there are certain limitations that are inherent in an appellate Court exercising its powers. One of them is that the appellate Court cannot decide the appeal as if it is the original Court itself vide *M. K. Narayanappa v. Geetha Stores*, (1980) 2 Kant LJ 347. The second is that on question of fact that largely depend on oral testimony. the conclusions of the trial Judge will not be lightly interfered with (vide *Sarju Pershan kamdeo Sahu v. Jwaleshwari Pratap, Narain Singh* : [1950]1SCR781 and *Radha Prasad Singh v. Gajadhar Singh* : [1960]1SCR663 . A reading of the order of the learned Civil Judge discloses that he has not kept before him the above principles and has dealt with the appeal as if he was the trial Judge. Another infirmity is that the learned Civil Judge while formulating 7 points as arising for determination in the appeal, does not deal with them point by point and deals at least with some of them, if not all, in a rolled up manner in very

lengthy paragraphs causing considerable difficulty in following his reasoning and conclusions. But, these infirmities do not justify a reversal of the judgment of the learned Civil Judge and a remand to him. I therefore propose. to examine the other points in their order.

Re: Point No. 2

Whether the plaintiff suit is based on title

21. Sri urged that the plaintiffs' suit was a suit for recovery of possession based on previous possession and dispossession or possessory title and was not a suit based on proprietary title or paramount title and the learned Civil Judge in proceeding to examine the case as if it was a suit based on title has committed an error of law.

22. Sri Jagirdar urged that the suit was based on title and the approach made by the learned Civil Judge was correct in law. -

23. As noticed earlier, the plaintiffs while alleging that they have derived title to the lands from their previous owner Baswantappa have not sought for their declaration of title. The suit filed by them is a suit for recovery of possession. In para 10 of their plaint, the plaintiffs have expressly and unequivocally stated that the suit has been brought by them within 12 years of the date of illegal possession of the defendant. By reading of the plaint one cannot say that the conclusion of the learned Munsiff that the plaintiffs' suit was for possession of immovable property based on previous possession and not on title and the examination of the issues on that basis is perverse and is wholly unwarranted.

24. The words 'based on title' occurring in Article 65 of the Act were introduced to overcome the effect of the earlier rulings rendered by the several High Courts on the scope and ambit of residuary Article 144'of the Limitation Act of 1908 (vide para 134 of the third report of the Law Commission of India on the Limitation Act, 1908). Whether the words 'based on title' can be construed as comprehending a mere allegation to title in a suit or should be construed and applied only to those cases in which there is a plea, as to title and declaration of -title is a moot point.

But, on the facts and circumstances of this case, it appears that it is not necessary to examine and decide the same finally.

25. On the nature of the claim made by the plaintiffs in their plaint, undoubtedly it was open to the learned Civil Judge to take a different view than the one expressed by the learned Munsiff and deal with the issues that arose for determination on that basis. The defendant does not also dispute that the previous owner of the properties was Baswantappa. From whom only, he also claims title. Apart from this the learned Civil Judge has examined the case of the plaintiffs both under Articles 64 and 65 of the Act. In this view, I propose to examine the case from both the points of view. On this conclusion it also follows that the correctness of the order made by the learned Munsiff on I A. No. 5, found to be erroneous by the learned Civil Judge, also loses much of its significance.

Re: Point No. 3.

Whether the plaintiffs are entitled to exclude the time occupied from prosecuting their earlier suit in the Court of Civil Judge, Gulbarga that, is from- 30-8-196-5 to 2824969 under Section 14 of the Act

26. Sri urged that there was no 'due diligence or good faith' in the previous suit filed by plaintiffs before the Court of the Civil Judge Gulbarga and the time occupied in prosecuting that suit before that Court cannot be excluded in computing the Period of limitation either under Article 64 or under Article 65 of the Act. He commended for accepting the finding of the learned Munsiff called for by this Court.

27.W. Sri Jagirdar urged that the entire approach made, by the learned Munsiff in recording his finding is not sound in law and the finding recorded by him, being vitiated is liable to be rejected.

28. In the narration of facts, I have noticed the serious error committed by the learned Civil Judge' and the order made by Sabhahit, J. to remedy the same and the finding submitted by the learned Munsiff. From this it follows, a detailed reference to the reasoning and the conclusions of the learned Civil Judge on the

question is not necessary and the same requires to be examined afresh bearing the law applicable thereto. But before doing so, it is necessary to notice that the learned Civil Judge referring to a large number of ruling of various High Courts, but without noticing the question concluded by the ruling of the Supreme Court in Amar Chand v. Union of India AIR 1971 SC 313 which reiterated the principles enunciated by the Privy Council in Ramdutt Ramakrissen Dau v. F. D. Sassoon. and Co., AIR 1929 PC 103 and Maqbul Ahmad v. Onkar Pratap Narain Singh, AIR 1905 PC 85, has taken the view that the suit should be deemed to have been filed on 30-9-1966 and, therefore, the same is in time (vide para 13 of his judgment). In Amar Chand's case the Supreme Court has ruled that when a plaint is returned by a Court that had no and is presented before the competent Court the suit will have to be treated as presented on the day the suit is presented before the competent Court only. On the enunciation made by the Supreme Court in Amar Chand's case, the view expressed by the learned Civil Judge that the suit filed by the plaintiffs before the Munsiff's Court, Chittapur on 15-4-1969 has to be treated as one filed on 30-8-1966 is clearly erroneous in law and the conclusion based on that permit is equally erroneous in law. Sri Jagirdar in my opinion, rightly did not support either the reasoning or the conclusion of the learned Civil Judge on this aspect of the matter. But, as noticed earlier, he strenuously contended that the period from 30-8-1966 to 28-2-1969 should be excluded under Sec 14 of the Act and on such exclusion the suit file on 15-4-1969 will be in time

29. Section 14 of the Act corresponds to Section 14 of the previous Act. in the new section certain changes have been made, but still the substance has continued to be the same. In sub-section (1) of Section 14 of the old Act, the words 'cause of action have been replaced by the words 'matter in issue. In this view, the interpretation placed on Section 14 of the previous Act can and should be applied.

30. The essential requisites for the application of Section 14 of the Act are that the party seeking the benefit of Section 14 had to affirmatively show (i) that he had been prosecuting the previous suit with due diligence; (ii) that the matter in issue in the previous suit and the new suit are the same, (iii) that the previous suit -was prosecuted in good faith; and (iv) that the Court was unable to entertain that suit on account of defect of jurisdiction or other cause of a like nature (vide Madhavrao

Narayanrao, Patwardhan v. Ram Krishna Govind Bhanu : [1959]1SCR564 . When the party seeking the benefit of Section 14 does not establish his case, the burden is not shifted on the other side . If all the aforesaid four elements are established, then only the period occupied in prosecuting the earlier suit, in this case from 30-8-1966 to 28-2-1969, will have to be excluded or added to the prescribed period; to borrow the language of the Privy Council in Maqbul Ahmad's case in computing the period of limitation either under Article 64 or under Article 65 to this Act.

31. The order made by the learned Civil Judge in O. S. No. 96il of 1966 was an appealable order (vide Order 43, Rule I (a) of the Code.) Admittedly the said order made by the learned Civil Judge which was not appealed by the plaintiff has become final. Section 105 of the Code that permits an appellate Court to examine the correctness of interlocutory orders made in the course of the trial, cannot be pressed into service in determining the correctness of the said orders made by the learned Civil Judge. If that is so the correctness of this order cannot be challenged by the plaintiffs in the present suit and the same would be hit by the principle of res judicata though it is true the Supreme Court in Amar Chand's case : [1973]2SCR684 left open a similar question But this does not mean, the plaintiffs cannot seek to exclude the period spent in the previous suit, if they establish all the four factors contemplated by Section 14 of the Act Whether the plaintiff have so established their case is the important question, on the face of which, the case of the parties really hinges which in the very nature of things has to be decided by me without the benefit of the views of the learned Civil Judge.

32. On consideration of the evidence placed before him on the two occasions, the learned Munsiff has found that the plaintiffs, were not prosecuting their previous suit with due diligence and good faith and, therefore, they are not entitled to the exclusion of the period from 30-8-1966 to 28-2-1969. In conformity with the objections filed by the plaintiffs, Sri Jagirdar urged that the learned Munsiff should not have relied on the finding recorded by the learned Civil Judge in O. S. No. 96/1 of 1966 and the entire appreciation of evidence based on the same is vitiated.

33. In recording his finding, the learned Munsiff has undoubtedly adverted to the order made by the learned Civil Judge, which he was bound to do. But, by reason

of that it cannot be said that the learned Munsiff has not kept before him the correct legal principles and has evaluated the evidence on any wrong principle. In, recording his finding, the learned Munsiff has noticed the ruling of the Supreme Court in Madhavrao Narayanrao Patwardhan's case : [1959]1SCR564 interpreting the scope and ambit of Section 14 of the old Act, which is still good law, has examined the evidence and has recorded his finding. In this view, the criticism of Sri Jagirdar that the approach made by the learned Munsiff is vitiated has, therefore, no merit.

34. In his defence filed in the previous suit, the defendant expressly pleaded that the lands had been sold to him for Rs. 1,500 and their value for purpose of jurisdiction had been grossly over valued and their value was not more than Rs. 5,000/- to Rs. 6,000/-. The plaintiffs while persisting in their plea that the value of the lands was Rs. 10,000/in O. S. No. 96/1 of 1966 filed O. S. No. 102 of 1968 in the Court of the Munsiff, Chittapur, valuing the suit lands for purpose of jurisdiction at Rs. 6,000/, Plaintiff. No. 1 examined as P. W. 1 does not give any explanation for this apparently inconsistent stand taken before two Courts in relation to the very lands. In tier deposition recorded on 19-11-1979 with reference to the finding called for by this Court, P. W. 1 denies the filing of any compromise application in O. S. No. 96/1 of 1966, though in her previous examination recorded on 17-2-1971 she expressly admits the same, The filing of a compromise petition by the plaintiffs in that suit, the execution of which was denied by the defendant- and was seriously contested on that ground and was later withdrawn by the plaintiffs, is a matter of record and is not in dispute also. From this it follows, no reliance can be placed on the testimony of P. W. 1. Except for the testimony of P. W. 1, the plaintiffs have not placed any other evidence. On the inconsistent and untrustworthy evidence, of P. W. 1, which even if believed in its entirety, is also insufficient to hold that the plaintiffs were prosecuting their previous suit with due diligence and good faith, the conclusion drawn by the learned Munsiff is consistent with the evidence and there are absolutely no grounds for me to take a different view and reject the finding of the learned Munsiff. On the other hand, every one of the submissions made by Sri Jagirdar to reject that finding of the learned Munsiff such as that the valuation in O. S. No. 102 of 1968 was made when the compromise petition in O. S. No. 96/1 of 1966 was pending, are far from truth and

cannot be accepted. For these reasons, I accept the finding of the learned Munsiff and hold that the period from 30-8-1966 to 28-2-1969 cannot be excluded and answer point No. 3 against the plaintiffs and in favour of the defendant.

Re: Point No. 4.

Whether the plaintiffs' suit is barred by time

35. Point No. 4 is inextricably mixed up with point No. 3 and my answer on that should also be the answer on this point. Hence, an elaborate discussion on the point is, therefore, not necessary.

36. The plaintiffs after obtaining the return of the plaint on 28-2-1969 presented the same in the Court of the Munsiff, Chittapur, on 15-4-1969. In 1. A. No. IV the plaintiffs claimed only for excluding the period from 30-8-1966 to 28-2-1969 and not the further period from 1-3-1969 to 14-4-1969 and, therefore, the question of excluding the period from 1-3-1969 to 14-4-1969 does not arise.

37. In their plaint, the plaintiffs have themselves admitted that the defendant was in wrongful possession at least from 1955, if not earlier. While specifying the year from which the defendant was in wrongful possession, the plaintiffs have not specified the date and month of that year. But, assuming that the defendant was in wrongful possession from the very last day of that year, whichever Article is applied, the plaintiffs' suit filed on 15-4-1,969 i.e., beyond 12 years is clearly barred by time and the, learned Civil Judge is holding to the contrary has committed as error of law. I therefore, answer point No. 4 also against the plaintiffs.

Re: Point No. 5.

Whether the Defendant has perfected his title by adverse possession?

38. Sri Gunjal urged that the defendant, even otherwise, had perfected his title by adverse possession and the finding of the learned Munsiff, on that issue was sound in law and the reversal of the, same by the learned Civil Judge is erroneous in law.

39.A Sri Jagirdar supported the finding of the learned Civil Judge

40. On a consideration of the evidence on record, applying the correct principles relating to adverse possession, the learned Munsiff, found that the defendant had perfected his title by adverse possession. In their plaint the plaintiffs have admitted that the defendant was in wrongful possession from 1955. The defendant had alternatively pleaded that he had perfected his title by adverse possession, even if there was any defect in his title. On the very plea of the plaintiffs and the period occupied before the filing of the suit, it follows, that the -plea of the defendant that he had perfected his title by adverse possession is well 'founded. While this is the position, the conclusion drawn by the learned Civil Judge ignoring the aforesaid admitted facts, as also various other documents and the conclusions drawn by the learned Munsiff, is clearly erroneous in law. In this view, I answer point No. 5 in favour of the defendant.

41. From the foregoing it follows that the plaintiffs' suit had been rightly dismissed, by the learned Munsiff and the interference by the learned Civil Judge is erroneous in law and the same, therefore, calls for interference of this Court under Section 100 of the Code 1 therefore, allow this appeal, set aside the judgment and decree of the learned, Civil Judge and restore the judgment and decree of the learned Munsiff and dismiss the plaintiffs' suit with costs throughout

42. Regular second appeal allowed with costs in all the Courts.

43. Appeal allowed.

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