

UTTAM NAMDEO MAHALE

v.

VITHAL DEO AND ORS.

MAY 7, 1997

[K. RAMASWAMY, S. SAGHIR AHMAD AND
G.B. PATTANAİK, JJ.]

Mamlatdar's Court Act, 1906 :

S.21—Order of eviction—Execution of—Limitation—Plea that since more than 12 years have elapsed, order cannot be implemented—Held, S.21 does not prescribe any limitation for execution of order—Order of ejection has become final—It can be executed at any time, especially when law of limitation for the purpose of this appeal is not there—In the absence of any specific limitation provided u/s. 21, general law of limitation provided under the Limitation Act, 1963 stands excluded—Limitation Act, 1963.

Babaji Khanduji v. Kushaba Ramji, 8 Bombay Law Reporter, (1906) 218, referred to.

State of Gujarat v. Patel Raghav Natha & Ors., [1970] 1 SCR 335; Ram Chand & Ors. v. Union of India & Ors., [1994] 1 SCC 44 and Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim, [1997] 6 SCC 71, held inapplicable.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3691 of 1997.

From the Judgment and Order dated 20.1.97 of the Bombay High Court in W.P. No. 6182 of 1996.

A.S. Bhasme and Manoj K. Misra for the Appellant.

S.V. Tambwekar and Nitin Tambwekar for the Respondents.

The following Order of the Court was delivered :

Leave granted.

This appeal has been filed against the order of the High Court of

A Bombay, made on January 20, 1997 in Writ Petition 6182 of 1996.

B The admitted position is that the respondent No. 1 is the owner of the property and earlier a notice was issued to the appellant to vacate the land in question. That order of eviction became final with the confirmation of the order by this Court in a special leave petition. Thereafter, proceedings were initiated for execution. An objection has been raised on the ground that since more than 12 years have elapsed, the order cannot be implemented. The High Court has pointed out that under Section 21 of the Mamlatdar's Court Act, 1906, it has not prescribed any limitation for execution of the orders vide the Division Bench judgment of the High Court of Bombay in *Babaji Khanduji v. Kushaba Ramji*, 8 Bombay Law Reporter(1906) 218.

C Mr. Bhasme, learned counsel for the appellant, contends that in the absence of fixation of rule of limitation, the power can be exercised within a reasonable time and in the absence of such prescription of limitation, the power to enforce the order is vitiated by error of law. He places reliance on the decisions in *State of Gujarat v. Patel Raghav Natha & Ors.*, [1970] 1 SCR 335; *Ram Chand & Ors. v. Union of India & Ors.*, [1994] 1 SCC 44 and *Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim*, CA No. 5023/85 decided on August 22, 1996. We find no force in the contention.

D It is seen that the order of ejection against the applicant has become final. Section 21 of the Mamalatdar's Court Act does not prescribe any limitation within which the order needs to be executed. In the absence of any specific limitation provided thereunder, necessary implication is that the general law of limitation provided in Limitation Act (Act 2 of 1963) stands excluded. The Division Bench, therefore, has rightly held that no limitation has been prescribed and it can be executed at any time, especially when the law of limitation for the purpose of this appeal is not there. Where there is statutory rule operating in the field, the implied power of exercise of the right within reasonable limitation does not arise. The cited decisions deal with that area and bear no relevance to the facts.

F
G The appeal is accordingly dismissed. No costs.

R.P.

Appeal dismissed.