

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO.200 OF 2013

- 1] Dhanraj s/o Nandeo Patil
Age 60 yrs, Occ-Agri
- 2] Madhukar s/o Sitaram Patil
Age 67 yrs, Occ.Agri
Both r/o Dhar, Tq. Amalner
Dist.Jalgaon.

.. APPLICANTS
[Orig.defendants]

Versus

- 1] Santosh s/o Pandit Patil
Age 36 yrs. Occu-Agri and
Labourer, R/o Dhar,
Tq.Amalner,Dist.Jalgaon
At present r/o Surat
Tq. & Dist.Surat (Gujrat)

.. RESPONDENTS
[Orig.Plaintiff]

...

Shri Vinod P. Patil,Adv. For applicants
Shri M.M.Patil Beedkar, Adv.for respondent

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CORAM : S.V.GANGAPURWALA,J.

DATED : 21ST SEPTEMBER, 2015

ORAL ORDER :-

The application given by the defendant/petitioner to dismiss the Suit as time barred invoking Section 3 of the Limitation Act is rejected.

- 2] Mr.Patil, learned counsel for the petitioners submits that the sale deed executed on 3/9/1981 is assailed for the first time in the

year 2011. The Suit on the face of it is barred by limitation. In such case Court can invoke its jurisdiction under Order 7 Rule 11 of C.P.C. He relied on the judgment of the Apex Court in the case of **Kamlesh Babu and others V/s Lajpat Rai Sharma and others reported in AIR 2008 SC (Supp) 1931**. I have also heard Mr.M.M.Patil Beedkar, learned counsel for respondents.

3] While considering the application for rejection of plaint, averments in the plaint are only required to be considered even as per judgment of the Apex Court in the case of Kamlesh cited supra by learned counsel for petitioner.

4] In the plaint, it is stated that the plaintiff got the knowledge of the sale deed in August, 2008. The Suit is filed on 12/8/2011.

5] Whether the said date was the first date of knowledge for the plaintiff or otherwise, can be concluded only after the parties adduce the evidence. Certainly the said application could not have been considered under Order 7 Rule 11 of the C.P.C. The Court in the order itself has observed that the issue of limitation in the present case is a mixed question of law and fact. It would be just and proper to decide the same alongwith other issues. Opportunity of the present petitioner to contest issue of limitation is not lost.

6] In light of above, revision is dismissed with no order as to costs. The Court may frame issue of limitation and decide the same with all other issues on its own merits.

[S.V.GANGAPURWALA,J.]

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