

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 24 OF 2015**

Shri Manoj Dongarchand Oswal
(HUF)

..Applicant

Vs

Shri Baban Sadashiv Sasaar and
Ors

.. Respondents

Mr. S.S.Kanetkar, Advocate for Applicant.

Mr. S.V.Sadavarte, Advocate for Respondents no.1 to 6. .

CORAM : R.G.KETKAR,J.

DATE : 15/12/2015

PC:

1. Heard Mr. S.S.Kanetkar, learned counsel for the applicant and Mr. S.V.Sadavarte, learned counsel for respondents no.1 to 6 at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908, (for short, 'C.P.C.'), applicant, hereinafter referred to as 'defendant', has challenged the Judgment and order dated 19.9.2014 passed by the learned 4th Jt. Civil Judge, Jr. Dn., Pune below Exhibit 19 in Regular Civil Suit No. 715 of 2014. By that order, the learned trial Judge directed respondents no.1 to 6, hereinafter referred to as 'plaintiffs', to correct the valuation of the suit as per section 6 (iv)(ha) of Maharashtra Court Fees Act and directed them to pay required stamp duty. The learned trial Judge further directed that if the plaintiffs fail to pay requisite

stamp duty within four weeks, Plaintiff would stand rejected. The learned trial Judge did not accept the claim made by the defendant that the plaintiff is liable to be rejected under Order VII, Rule 11(a) as it does not disclose cause of action and under VII, Rule (11)(d) as the suit is barred by limitation.

3. Mr. Kanetkar strenuously contended that the plaintiff does not disclose cause of action. Earlier, the plaintiffs had instituted Regular Civil Suit No.1696 of 2005 for partition, declaration and perpetual injunction. On 30.9.2011 suit was decreed. It was declared that the plaintiffs are entitled to half share in the suit property which also includes the property in dispute. The learned trial Judge further held that the plaintiffs are entitled to separate possession. Aggrieved by that decision, Appeal is preferred and the decree passed by the learned trial Judge in Regular Civil Suit No.1696 of 2005 is stayed. He submitted that the learned trial Judge declared that the plaintiffs are entitled to half share in the suit property. Presently the suit property is 47 Areas out of 1 H. 86 Areas from Survey No. 21, Hissa No. A/1. Even if the plaintiffs ultimately succeed in the suit for partition, at the highest ,they are entitled to half share. Having regard to area of Survey No.21, Hissa No. A/1, the sale deed executed in favour of the applicant by defendants no.7 and 8 in R.C.S. No.1696 of 2005, is not affected. The plaintiffs have not alleged that they are entitled to

47 Ares purchased by the defendants under sale deed dated 6.1.2010. He, therefore, submitted that plaint is liable to be rejected under Order VII, Rule 11(a).

4. As far as ground of limitation is concerned, he submitted that defendants no.7 and 8 Madhukar Sabaji Sasar and Nivruti Sabaji Sasar had executed sale deed on 6.1.2010 and present suit is instituted on 24.4.2014. In view of Article 58 of the Limitation Act, the plaintiff ought to have instituted suit within three years from execution of the sale deed. Suit on the face of it is barred by limitation.

5. On the other hand, Mr Sadavarte supported the impugned order. He submitted that the learned trial Judge had decreed the suit on 30.9.2011 and though appeal is preferred and stay is granted, that does not mean that the decree passed in favour of the plaintiffs is set aside. He further submitted that so long as partition is not actually effected by metes and bounds, the plaintiffs are entitled to claim ownership over entire Survey No. 21, Hissa No.A/1 and at this stage it cannot be said that the plaintiffs have half share in a particular portion of that property. He further submitted that in paragraph 3 of the plaint, the plaintiffs specifically asserted that Regular Civil Suit No. 1696 of 2005 was instituted on 28.11.2005 and during the pendency of the suit, lis pendens was registered with Joint Sub-Registrar

(Class II), Haveli No.15, Pune on 25.1.2008. Defendants no.7 and 8 were aware of pendency of the suit as they had filed Written Statement. Despite that and also registration of lis pendens, they executed sale deed in favour of the defendant on 6.1.2010. He submitted that plaint clearly discloses cause of action and consequently cannot be rejected under Order VII, Rule 11(a).

6. As far as ground of limitation is concerned, he submitted that in paragraph 4 the plaintiffs specifically asserted that in March 2014 when the defendants tried to obstruct their possession with police help, they came to know about execution of the sale deed and the suit is instituted on 24.4.2014 and is, therefore, within limitation.

7. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, earlier suit of the plaintiffs was decreed. Pending the suit, lis pendens is registered on 25.1.2008. It also appears that the defendants have filed written statement. In other words, they were aware of pendency of the suit. Despite that, they executed the sale deed in favour of the defendant on 6.1.2010. Perusal of the plaint shows that the plaintiffs have made out a case that they acquired knowledge of the sale deed in March, 2014 and the suit is instituted on 24.4.2014. After considering the averments in the plaint, it

cannot be said that it does not disclose cause of action as contemplated under Order VII, Rule 11(a). I, therefore, do not find that the learned trial Judge committed any error in that regard.

8. As far as the ground limitation is concerned, for the reasons stated in paragraphs 4 and 7 in the plaint, it cannot be said that suit is barred by limitation. In view thereof, I do not find that the learned trial Judge has committed any error while holding that the suit is within limitation. Hence, no case is made out for invocation of powers under section 115 of C.P.C. Application fails and the same is dismissed.

9. It is made clear that the observations made herein are tentative and prima facie and are made only for the purpose of considering correctness of the impugned order. The learned trial Judge will decide the suit on the basis of evidence on record and on its own merits in accordance with law uninfluenced by the observations made herein. Order accordingly.

(R.G.KETKAR, J.)