

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.933 OF 2014**

Shashikala Shankar Jadhav

..Applicant

Vs.

Aakash Youraj Jadhav

..Respondent

Mr. Anand Shivaji Patil for the Applicant

**CORAM : R. M. SAVANT, J.
DATE : 3rd FEBRUARY, 2015**

P.C.

1 The Revisionary Jurisdiction of this Court is invoked against the order dated 6-12-2013, passed by the Learned 3rd Joint Civil Judge Junior Division, Kolhapur, by which order, the application Exhibit 31 filed by the Applicant i.e. the Defendant Nos.2 and 3 invoking Order VII Rule 11 of the Civil Procedure Code, for rejection of the plaint as being barred by limitation, came to be rejected.

2 It is required to be noted that the Respondent No.1 is the original Plaintiff in the Suit in question being Regular Civil Suit No.804 of 2011 in which the Plaintiff has claimed three reliefs. The first relief claimed is by way of an injunction for restraining the Defendant No.1 from interfering with the possession. The second relief sought is by way of declaration that the Plaintiff

has become owner of the Suit property by virtue of the Will dated 13-9-2002. The third relief claimed is a declaration that the gift deed dated 16-12-2002 in favour of the Defendant No.1 has been got executed by practicing a fraud and therefore is illegal and the same is not binding on the Plaintiff's right over the suit property. It seems that in view of the declaration sought in respect of the gift deed dated 16-12-2002 in the year 2011 that the Defendant Nos.2 and 3 filed the instant application seeking rejection of the plaint on the ground of limitation.

3 The Trial Court considered the said application and held that in so far as the issue of limitation is concerned, in view of the fact that the plaintiff has not specifically pleaded as to when he has become aware of the said gift deed, the said issue can be adjudicated only after the evidence is led in the Suit. The Trial Court however rejected the said application Exhibit 31 on the ground that the Suit also contains a prayer sought by way of seeking injunction against the Defendant No.1

4 It is also required to be noted that the Plaintiff has also sought a declaration that he has become owner by virtue of the Will dated 13-9-2002 executed by the donor who has executed the gift deed dated 16-12-2002. Hence apart from challenge to the gift deed the Suit also contains other prayers which have been adverted to hereinabove. In so far as the other prayers are

concerned, it therefore cannot be said that the Suit in respect of the other prayers is barred and has to be rejected by having recourse to Order VII Rule 11 of the Civil Procedure Code. In that view of the matter, no fault can be found with the impugned order passed by the Trial Court. Hence no case for exercise of Revisionary Jurisdiction of this Court is made out. The Civil Revision Application is accordingly dismissed.

[R.M.SAVANT, J]