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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 83 OF 2014

Tejraj Juharmal Gandhi .. Applicant

Vs.

Kashinath Pandharinath Pawar .. Respondent

Mr.Abhijit P.Kulkarni, Advocate for the Applicant.

CORAM : R. G. KETKAR, J.

DATE : 20th JULY, 2015

P.C. :

. Heard Mr.Abhijit P.Kulkarni, learned Counsel for the applicant at length.

2. By this Application under Section 115 of Code of Civil Procedure, 1908 (for short 'C.P.C.'), original defendant has challenged the order dated 15/12/2012 passed by the learned Civil Judge, Junior Division, Baramati below Exhibit 21 in Regular Civil Suit No. 247 of 2010. By that order, the learned trial Judge rejected the application filed by the defendant under Order 7 Rule 11 of C.P.C.

3. Mr.Kulkarni submitted that respondent, hereinafter referred to as plaintiff has instituted Suit for redemption of mortgage dated 11/10/1999 as also for possession of the suit property. The Suit is instituted on 03/08/2010. The defendant resisted the Suit by filing written statement on 26/11/2010. In paragraph 6, defendant

contended that transaction contained in the document dated 11/10/1999 and is not a mortgage, but is a sale with condition to repurchase.

4. During the pendency of the Suit, defendant took out application at Exhibit 21 on 08/11/2011 under Order 7 Rule 11 of C.P.C. for rejection of plaint on the ground that Suit is barred by limitation as also is bad for non-joinder of necessary party. By the impugned order, the learned trial Judge rejected the application. Mr.Kulkarni submitted that the learned trial Judge passed cryptic order and did not record any reason as to why Suit is or is not bad for non- joinder of necessary party.

5. I have considered the submissions advanced by Mr.Kulkarni. I have also perused the material on record. As noted earlier, Suit is instituted on 03/08/2010 for redemption of mortgage dated 11/10/1999. The learned trial Judge held that under Article 61 (a) , period of limitation is 30 years for redemption or recovery of possession of immovable property mortgaged and the period of 30 years begins when the right to redeem or to recover possession accrues. The Suit is instituted within 30 years from 11/10/1999. The learned trial Judge, therefore, held that Suit is not barred by limitation. I do not find that the learned trial Judge has committed any error in holding that Suit is not barred by limitation.

6. As far as other contention namely Suit is bad for non-

joinder of necessary party is concerned, having regard to the fact that in paragraph 11 of the written statement, the defendant has pleaded that Suit is bad for non-joinder of necessary party, the learned trial Judge while deciding the main Suit will frame necessary issue as to whether the Suit is bad for non-joinder of necessary party and decide the same in accordance with law. All contentions in that regard are expressly kept open. Subject to this, Application fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)