

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 589 OF 2015**

Murlidhar Dattatray Pawar & Ors.

..Applicants

Vs.

Babai Dattatray Pawar & Anr

..Respondents

Mr. R. M. Haridas i/b Mr. S. V. Khaire for the Applicants

CORAM : R. M. SAVANT, J.

DATE : 15th OCTOBER, 2015

P.C.

1 The Revisionary Jurisdiction of this Court is invoked against the order dated 6-12-2014 passed by the Learned Joint Civil Judge Junior Division, Daund, by which order the preliminary issue framed under Section 9A and under Order VII Rule 11(d) were answered against the Applicants who are the Defendant Nos.1 to 3.

2 This is a case where the mother has filed a Suit against her son i.e. the Defendant No.1 and her daughter in law and grandson i.e. the Defendant Nos.2 and 3. The gist of the prayers in the suit is a declaration in respect of two mutation entries sought vide prayer clauses (b) and (c) and a declaration in respect of a Sale Deed dated 24-12-2004 whereby the Defendant No.2 i.e. the grandson of the Plaintiff has sold 31 Ares out of the suit properties to the Defendant No.4. The Plaintiff has also sought relief of injunction for restraining

the Defendant Nos.1 to 4 from further creating third party rights in the suit property.

3 Having regard to the reliefs sought in the Suit, the Defendant Nos.1 to 3 filed an application invoking Section 9A and Order VII Rule 11(d) of the Civil Procedure Code, in so far as limitation is concerned. It seems that the Plaintiff did not adduce any evidence where as evidence was adduced on behalf of the Defendants, of the Defendant No.1. The Trial Court considered the said application and by the impugned order has adjudicated upon the said preliminary issue regarding limitation and has held that the Suit as filed by the Plaintiff is not barred by limitation. The Trial Court has prior to so holding has observed that the Defendant No.1 has not filed the concerned revenue record to show that the Plaintiff had participated in the mutation entry or partition proceedings and therefore the Defendant No.1 has failed to prove that the Suit is barred by limitation. The Trial Court has thereafter adverted to the averments made in paragraph 6 of the plaint wherein the Plaintiff has stated that in or about third week of May 2010 she went to make a Will of her estate and she applied through her daughters son. On the receipt of documents she realised as regards the execution of the Sale Deed by the Defendant No.2 in favour of the Defendant No.4 and it is thereafter she has filed the instant Suit challenging the Sale Deed dated 24-12-2004. The Trial Court having regard to the said averments and applying Article 58 of the Limitation Act held that the

Suit was not barred by limitation, by the first impugned order dated 6-12-2014.

4 The Defendants thereafter filed an application for review on the ground that the Trial Court has not considered the documents which were produced by the Defendants in support of their case that the Suit was barred by limitation. The said application came to be rejected by the second impugned order dated 30-4-2015 on the ground that no ground on the basis of which review of the order is sought is mentioned in the application and therefore the same was required to be rejected.

5 It is the submission of the Learned Counsel for the Applicants Mr. Haridas that the Trial Court whilst adjudicating the preliminary issue has not taken into consideration the documents which have been produced on record and which find a mention in the application for review in Paragraph 6 thereof.

6 With the assistance of the Learned Counsel for the Applicants I have gone through paragraph 6 and the documents mentioned therein. In my view, assuming that the said documents were not considered by the Trial Court, the said documents would not further the case of the Defendants in so far as the issue of limitation is concerned. The documents do not connect the Plaintiff being to the execution of the Sale Deed in question. The documents only relate

to the factum of the Plaintiff residing with the Defendants. It is required to be noted that it is the case of the Plaintiff that only after she went to the revenue office to make inquiries so as to execute a Will that she came to know of the Sale Deed dated 24-12-2004. The said case of the Plaintiff has not been dented in any manner by the evidence laid by the Defendant No.1 at the trial of the said preliminary issue. As indicated above the Trial Court has observed that the Defendant No.1 has not produced any documents to show that the Plaintiff had participated in the mutation entry proceedings.

7 In so far as the prayer clauses (b) and (c) are concerned, they relate to the challenge to the mutation entries whether such reliefs could be granted by a Civil Court is for the Trial Court to decide, having regard to the well settled position in law. In my view therefore, the order passed by the Trial Court answering the preliminary issue and rejecting the application for review do not suffer from any error of jurisdiction committed by the Trial Court for this Court to exercise its Revisionary Jurisdiction, the Civil Revision Application is accordingly dismissed. The hearing of the suit in question is however expedited.

[R.M.SAVANT, J]