

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.470 OF 2015**

Gujrabai Bhoru Kharate & Ors.

..Applicants

Vs.

Kai Laxman Soma Lahange (deceased) & Ors

..Respondents

Mr. S. P. Shinde for the Applicants

CORAM : R. M. SAVANT, J.

DATE : 29th SEPTEMBER, 2015

P.C.

1 The Revisionary Jurisdiction of this Court is invoked against the order dated 20-6-2015 passed by the Learned Joint Civil Judge Senior division Nasik, by which order, the preliminary issues framed under Order VII Rule 11 of the Civil Procedure Code have been answered by the said Court.

2 The two preliminary issues which were framed were whether the Suit is barred by limitation having regard to the fact that the Suit was filed for specific performance and injunction. The parties were given an opportunity to lead evidence which the parties did. It is after the parties were given an opportunity to assert their respective cases that the Trial Court has observed that the Suit in so far as the relief of specific performance is concerned is barred by limitation. However, the Suit in so far as the relief of perpetual injunction is concerned is maintainable.

3 The Learned Counsel appearing on behalf of the Applicants would contend that the order is bereft of any reasons as to why the Trial Court has come to a conclusion that the Suit in so far as the relief of injunction is concerned is in limitation.

4 In my view, the said submission of the Learned Counsel for the Petitioner is misconceived. As indicated above, the Suit in question has been filed for specific performance and injunction and it is the case of the Plaintiff that he was put in possession in part performance of the contract. If that be so, the Trial Court was right in coming to a conclusion that the Suit in so far as the relief of injunction is concerned, cannot be held to be not maintainable at the thresh hold. Whether the Plaintiff is entitled to the relief of injunction is for the Trial Court to consider at the trial of the Suit.

5 In that view of the matter, no case for exercise of Revisionary Jurisdiction is made out. The Civil Revision Application is accordingly dismissed.

6 Needless to state that the Trial Court would undoubtedly decide the Suit for injunction on its own merits and in accordance with law.

[R.M.SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed order