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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 897 OF 2014

Sou.Mandabai Yashwant Karanjawane

.. Applicant

Vs.

Mr.Shripatrao Ganpatrao Sapte and others

.. Respondents

Mr.Vineet B.Naik, Senior Advocate i/b Mr. Pavan S.Patil, for the Applicant.

Mr.Prathamesh Bhargude, Advocate for Respondent No.1.

CORAM : R. G. KETKAR, J.

DATE : 21st JULY, 2015

P.C. :

. Heard Mr.Vineet B.Naik, learned Senior Counsel for the applicant and Mr.Prathamesh Bhargude, learned Counsel for the respondent No.1 at length.

2. By this Application, under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original defendant No.12 has challenged the judgment and order dated 25/04/2014 passed by the learned 4th Joint Civil Judge, Senior Division, Pune below Exhibit 36 in Regular Civil Suit No. 164 of 2014. By that order, the learned trial Judge rejected the application taken out by defendant No.12 under Order 7 Rule 11(d) of C.P.C.

3. In support of this Application, Mr.Naik submitted that respondent No.1, hereinafter referred to as plaintiff has instituted

Suit on 21/01/2014 essentially seeking relief of specific performance based on receipt executed on 10/10/1981 as well as agreement of sale dated 15/10/1981. Mr.Naik submitted that it is the case of the plaintiff that plaintiff and said Dashrath Konde jointly purchased the property in dispute for the purpose of forming a co-operative society. He submitted that in paragraph 7, the plaintiff asserted that one Mr.Tushar Pannalal Singhavi-defendant No.30C filed application in the name of Mandabai Yashwant Karanjawane i.e. defendant No.12 on 30/07/2008 before defendant No.29 (iii)- Tahsildar Pune City for recording her name in the place of Dashrath Govind Konde, since deceased, as his heir. He submitted that in the said application, it was set out that Mandabai is only daughter of Dashrath Konde and therefore, her name be recorded in the place of Dashrath Konde. The plaintiff asserted that as soon as he acquired knowledge about the mutation entry No. 23781, he raised objection on 29/09/2008 before Village Talathi as well as Tahsildar Pune on the ground that Mandabai is not the daughter of late Dashrath Konde. In paragraph 12, the plaintiff contended that cause of action firstly arose on 30/07/2008 when defendant No.12 filed an application for recording her name as heir and thereafter on the notice received by plaintiff under the signature of Tahsildar Pune City on 18/07/2013 and cause of action is continuous. In other words, Mr.Naik submitted that on the basis of the averments made in the plaint itself, the Suit is clearly

barred by limitation and accordingly, plaint is liable to be rejected under Order 7 Rule 11 of C.P.C.

4. Mr.Naik further submitted that by prayer clause (d), the plaintiff has sought declaration that defendants No. 1 to 28 & defendant No.30 did not acquire any right on the basis of various decisions passed by the Revenue Authorities or that it be declared that all the decisions passed by Revenue Authorities right from Tahsildar to Commissioner are against the law. The said prayer clause is specifically barred in view of Section 158 of the Maharashtra Land Revenue Code 1966 (for short 'Code'). On this count also, plaint is liable to be rejected under Order 7 Rule 11(d) of C.P.C.

5. On the other hand, Mr.Bhargude supported the impugned order. He submitted that Article 54 of the Limitation Act, lays down period of limitation. It is not averred by plaintiff that he had notice that performance is refused. In view of Article 54, it cannot be said that Suit is barred by limitation by considering only averments made in the plaint. As far as other contention that prayer clause (d) is barred in view of Section 158 of the Code is concerned, he relied upon decision of this Court in the case of *Shree Hanuman Mandir, Alibag Public Trust through its Trustees Vs. Satishchandra Bhalchandra Gurjar*, **2014(2) Bom.C.R. 221**. In paragraph 34 of that report, the decision of the Apex Court in the case of *Sopan*

Sukhdeo Sable Vs. Assistant Charity Commissioner, 2004(3)

S.C.C.137, was considered. In that case, it is observed that merely because some of the reliefs cannot be granted in the Civil Court, it can not entail an automatic rejection of the entire plaint. He therefore, submitted that plaint cannot be rejected on that ground also only.

6. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. It is nobody's case that date was fixed for performance of contract. With the assistance of the learned Counsel appearing for the parties, I have gone through the plaint and in particular, paragraphs 7 & 12. Perusal of the averments in the plaint, do not indicate that plaintiff had notice of refusal of performance.

Article 54 of the Limitation Act reads as under.:

Description of suit	Period of limitation	Time from which period begins to run
For specific performance of a contract.	Three years	The date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused.

7. While considering the application under Order 7 Rule 11(d) of C.P.C., it is settled position that only averment in the plaint are required to be considered. In view thereof, it cannot be said that Suit is barred by limitation. In the light of this, it cannot be said

that Suit is barred by limitation.

8. As far as prayer clause (d) is concerned, in view of decision of this Court in the case of **Shree Hanuman Mandir, Alibag Public Trust through its Trustees** (*supra*) as well as decision of the Apex Court in the case of **Sopan Sukhdeo Sable** (*supra*) merely because some of the reliefs cannot be granted in the Civil Court, it can not entail an automatic rejection of the entire plaint. In other words, assuming that prayer clause (d) cannot be granted by the Civil Court in view of bar under Section 158 of the Code, nonetheless it cannot be said that Civil Court is precluded from considering rest of the prayers. In view thereof, no case is made out under Section 115 of the C.P.C. Hence, Application fails and the same is dismissed.

(R. G. KETKAR, J.)