

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 807 OF 2013

Sou.Laxmibai Bandu Birambole ..Applicants
and Ors

Vs

Shri Dilip Vitthal Narvekar .. Respondent

Mr. Prashant S. Bhavake, Advocate for Applicant.

CORAM : R.G.KETKAR,J.
DATE : 08/06/2015

PC:

1. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the petitioners-original defendants have challenged the order dated 21.2.2012 passed by the learned Civil Judge, Junior Division, Ajara, below Exhibit-11 in Regular Civil Suit No. 43 of 2012. By that order, the learned trial Judge rejected the application made by the petitioners for rejection of a Plaint under Order VII Rule 11(d) of C.P.C.

2. In support of this Petition, Mr Bhavake strenuously contended that the respondent-plaintiff instituted suit on 11.1.2012 challenging the decree dated 5.3.1993 passed in Regular Civil Suit No.16 of 1989. The respondent did not institute suit within a period of three years from passing of the decree on 5.3.1993 as prescribed by Article 59 of the Limitation Act, 1963.

He invited my attention to prayer clauses (b) and (c) and submitted that prayer clause (b) is clearly barred by limitation. As far as prayer clause (c) is concerned, he submitted that in view of Section 158 of the Maharashtra Land Revenue Code, 1966, Civil Court has no jurisdiction to entertain and try the suit for declaration that the mutation entries are illegal.

3. The learned trial Judge has considered these submissions and held that some of the reliefs claimed by the plaintiff, namely, first two reliefs are prima facie barred by limitation. The other reliefs are well within limitation and not barred by any law. The Civil Court, therefore, has jurisdiction to entertain and try the suit.

4. By prayer clause (b), the plaintiff has prayed that the decree passed in Regular Civil Suit No. 16 of 1989 is null and void. The plaintiff may succeed in establishing that prayer or he may not succeed. It is a matter of trial. At this stage, one has to consider the assertions made in the plaint only while considering the application under Order VII Rule 11 (d). In view thereof, I do not find that the learned trial Judge has committed any error in passing the impugned order. The learned trial Judge, as noted earlier, has recorded that the plaintiff has prayed several reliefs and out of these, two reliefs are prima facie barred by limitation and the other reliefs are not barred by law. For the reasons stated

in paragraphs 12 to 15, I do not find that the learned trial Judge has committed any error. Hence, Petition fails and the same is dismissed.

5. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)