

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

CIVIL REVISION APPLICATION NO.596 OF 2015

Mrs.Jayanti Gaurijeevan Bhalerao : Applicant.
Versus
Vinayak Dattatraya Lingnurkar : Respondent.

Mr. R M Pethe for the Applicant.

CORAM : R. M. SAVANT, J.
DATE : 12th October 2015

P.C.

1 The revisionary jurisdiction of this Court is invoked against the order dated 05/09/2015 passed by the learned 8th Joint Civil Judge, Senior Division, Pune by which order the Application (Exhibit 15) filed by the Petitioner – Defendant invoking Order VII Rule 11(d) of the Code of Civil Procedure on the ground that the suit is barred by limitation came to be rejected.

2 This is an unfortunate case where the father has filed a suit against his daughter i.e. the Defendant. The subject matter of the suit is the gift deed dated 05/10/2011 executed by the Plaintiff in favour of the Defendant, by virtue of which he has gifted away the flat in question to the Defendant. The suit has been filed for a declaration that gift deed dated 05/10/2011 is null and void and not binding upon the Plaintiff and for a further declaration the gift deed be declared as cancelled and that the Defendant be restrained by an

order of injunction from creating third party interest in respect of the flat in question.

3 Since the challenge to the gift deed is raised in the suit, the Defendant filed the instant application raising a plea of limitation under Order VII Rule 11(d) of the Code of Civil Procedure on the ground that the suit is barred by limitation.

4 The Trial Court having regard to the averments made in the plaint and especially the averment relating to how the gift deed was got executed from the Plaintiff by the Defendant and as to how the Plaintiff came to know about the same when he saw the name of the Defendant on the PMC property tax notice, held that the issue of limitation in the instant case is a mixed question of law and fact and for deciding the same, evidence would have to be led and rejected the application.

5 In my view, having regard to the reasons for which the application has been rejected, it cannot be said that the Trial Court has committed any error of jurisdiction or any other illegality or infirmity for this Court to exercise its revisionary jurisdiction. The above Civil Revision Application is accordingly dismissed.

[R.M.SAVANT, J]