

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Revision Application No.134 of 2013
Shridhar Madhao Deshpande and anr. Vs. Vijay Mahadeorao Athale and anr.

Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's
Orders.

CORAM : Z.A. HAQ, J
DATE : 14th January, 2015.

Heard Ms. M.P. Munshi, the learned Advocate for the applicants and Shri A.S. Mehadia, the learned Advocate for the non-applicants.

This Civil Revision Application is filed by the original defendants challenging the order passed by the trial Court rejecting the application (Ex.38) filed by them under Order VII Rule 11 of the Code of Civil Procedure.

The submission on behalf of the applicants is that the claim as made by the non-applicants/plaintiffs is barred by limitation and, therefore, the civil suit is not maintainable and the plaint is liable to be rejected under Order VII Rule 11 (d) of the Code of Civil Procedure. The learned Advocate for the applicants has submitted that as per the averments in the plaint, there was an order of injunction operating against the applicants restraining them from selling the suit property and therefore, it is an admitted position even according to the averments in the plaint that the claim as made by the non-

applicants/plaintiffs is barred by limitation.

The learned trial Judge has dealt with all the aspects specifically the fact that an application (Ex.15) was filed by the applicants-defendants in the matter which came to be decided by the order dated 21st December, 2011 as recorded in paragraph no.37 of the impugned order, which reads as follows:-

"I have gone through application Exh.15. It is filed on 25.01.2011 by defendant No.3 Shridhar. The then Jt. Civil Judge (S.D), Akola Shri A.K. Shah has passed order below Exh.15 on 21.12.2011 and thereby decided the application. The operative order is as under:-

1. Application stands disposed of on following terms:

a) The issue of limitation and the effect of judgment passed in Reg. C.S. No.507/96 will be decided on merits along with other issues.

2. No order as to costs".

The learned trial Judge has not foreclosed the challenges raised by the applicants on the point of limitation and has consciously kept it open for consideration along with other issues observing that the point of limitation as raised by the applicants-defendants is mixed question of fact and law.

The impugned order does not suffer from any infirmity. The Civil Revision Application is dismissed with costs quantified at Rs. 5000/- to be paid by the applicants to the non-applicants till 20th February, 2015 and the receipt of it should be produced on the record of the trial Court. In default on the part of the applicants to pay the amount of costs, the learned trial Judge shall pass appropriate order in the matter.

JUDGE

Ambulkar