

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.175 OF 2016

Anusaya Shridhar Morade and others ... Applicants
Vs.
Vijay Haribhau Kamble and others ... Respondents

Mr. Satyajeet P. Dighe for Applicants.

CORAM : R. G. KETKAR, J.
DATE : APRIL 13, 2016

P.C. :

Heard Mr. Dighe, learned Counsel for applicants at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908, applicants have challenged the judgment and order dated 02.01.2016 passed by the learned 5th Joint Civil Judge, Junior Division, Nashik below exhibit-1 in Special Civil Suit No.347 of 2012. By that order, the learned trial Judge overruled the objections raised by the applicants, hereinafter referred to as defendants No.1 to 6, as regards bar of limitation and held that the Suit instituted by the plaintiffs is within limitation and directed the parties to proceed with the Suit.

3. Mr. Dighe strenuously contended that purported Agreement of Sale was executed on 04.08.1999 and Sale Deed was to be executed on or before 02.02.2000. The Suit is instituted for specific performance in the year 2012. In view of Article 54 of the Limitation Act, 1963, plaintiffs ought to have instituted Suit within 3 years from 02.02.2000, being the date fixed for performance of contract. As the Suit is instituted in the year 2012, it is clearly barred by limitation. He, therefore, submitted that the learned trial Judge ought to have answered the preliminary issue in favour of the defendants.

4. Mr. Dighe further submitted that one of the conditions in the agreement for sale was mutating the names of common ancestors in revenue record and deleting the name of sister of common ancestors in other rights column. He submitted that the applicants have mutated the names of common ancestors in the Revenue Record. On this count, the learned trial Judge should have answered preliminary issue in favour of the applicants.

5. I have considered the submissions advanced by Mr. Dighe. I have also perused the material on record. In paragraph 11 of the impugned order, the learned trial Judge has noted that defendants did not issue notice terminating the agreement. Even though the time was fixed for performance of contract, prima facie, defendants have not complied conditions No.5 to 7 by obtaining Income Tax Clearance and Ceiling Certificate. Even defendants did not come with the case about compliance of these conditions. It, therefore, cannot be said that the Suit is barred by limitation. I do not find that the learned trial Judge has committed any error in arriving at this conclusion. Subject to this, Application fails and the same is dismissed. The learned trial Judge will, however, keep in mind Section 46 of the Indian Contract Act, 1872 and will frame issue on that basis.

(R. G. KETKAR, J.)

Minal Parab