

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

CIVIL REVISION APPLICATION NO.568 OF 2016

Mr. Amarjit Singh Gurbaksh
Singh Anand

..Applicant

Vs

Mr. Thakurjit Singh Gurbaksh
Singh Anand and Ors

.. Respondents

Mr. N.J.Samant a/w Mr Sandeep V. Mahadik, Advocate for
Applicant.

Mr. Satish G Maheshwari, Advocate for respondent no.1.

CORAM : R.G.KETKAR,J.
DATE : 17/11/2016

PC:

1. Heard Mr.N.J.Samant, learned counsel for the applicant and Mr.Satish Maheshwari, learned counsel for respondent no.1. at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant has challenged the Judgment and order dated 28.6.2016 passed by the learned Judge, City Civil Court, Dindoshi, Mumbai in Notice of Motion No. 1006 of 2016 in S.C. Suit No.415 of 2016. By that order, the learned trial Judge rejected the motion taken out by the applicant, hereinafter referred to as 'defendant no.3', for rejecting the plaint under Order VII, Rule 11(d) of C.P.C. Defendant no.3 took out that Motion on the ground that suit is barred by

limitation.

3. In support of this Application, Mr. Samant submitted that respondent no.1, hereinafter referred to as 'plaintiff', has instituted suit, inter alia, praying for declaration that he has 1/6th undivided share in the suit property; for partition and separate possession of his 1/6th portion by metes and bounds, among other prayers. He invited my attention to paragraph 10 of the plaint wherein the plaintiff asserted that cause of action firstly accrued when his mother late Mrs Nanak Kaur Gurbaksh Singh Anand died on 29.11.2002 and the plaintiff became entitled to his undivided 1/6th share in the suit property. Secondly, fresh cause of action arose when the plaintiff decided to claim his separate share in the undivided suit property and accordingly issued notice on 29.12.2015. Mr. Samant submitted that as the cause of action firstly arose on 29.11.2002 and the suit is instituted by the plaintiff on 5.2.2016, it is clearly barred by limitation. In support of this proposition, he relied upon the decision of this Court in Paresh Damodardas mahant Vs Arun Damodardas Mahant, 2015(2) ALL MR 38.

4. On the other hand, Mr. Maheshwari supported the impugned order. He submitted that suit for partition is governed by Article 110 of the Limitation Act, 1963. In paragraph 3 of the plaint, the plaintiff has asserted that the suit property is presently in joint possession of the plaintiff and each one of the defendants no.1 to

7 while permitting defendant no.3 to hold and occupy the same on behalf of the plaintiff and each one of defendants no.1 , 2 and 4 to 7. He, therefore, submitted that no case is made out for invocation of powers under Section 115 of C.P.C.

5. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the plaintiff has, inter alia, prayed for declaration of his 1/6th share in the suit property and for partition and separate possession by metes and bounds of the suit property. Prayers (a) and (b) read thus:

“(a) The Honourable Court be pleased to pronounce that the plaintiff has one sixth undivided share in the suit property;

(b) The Honourable Court be further pleased to order that the suit property be divided by metes and bounds and out of the same one sixth portion be demarked and the possession of such demarked portion be handed over to the plaintiff as his share in the suit property.”

Article 110 of the Limitation Act, 1963 prescribes period of 12 years for filing a suit by a person excluded from a joint family property to enforce a right to share therein when the exclusion becomes known to the plaintiff. In the present case, the plaintiff has averred in paragraph 3 that he is in joint possession with other defendants. In view thereof, I do not find that the learned trial Judge committed any error in dismissing the Motion.

6. Mr. Samant relied upon the decision of this Court in Paresh Damodardash Mahant (*supra*). In that case, after considering the

plaint in its entirety, the learned single Judge held that the suit is barred by limitation. In the present case, reading of plaint in its entirety does not show that suit is barred by limitation. While dealing the application under Order VII, Rule 11(d) of C.P.C, the Court has only to consider the averments made in the plaint. Considering the plaint in its entirety, I do not find that any case is made out for interfering with the impugned order. Hence, Application fails and the same is dismissed.

7. At this stage, learned counsel appearing for the parties state that following cases are pending between the parties and others.

1. S.C.Suit No.415 of 2016 in City Civil Court, Dindoshi.
2. L.E.Suit No.109 of 2008 in Small Causes Court, Bandra.
3. Regular Civil Suit No.1432 of 2012 pending in the Court of Civil Judge, Senior Division, Thane,

They jointly submit that these cases may be referred to mediation of Mr Rajiv Patil, Senior Advocate of this Court. They assure that the parties herein will appear before the learned Mediator along with papers and proceedings of the above matters on 29.11.2016 at 5.30 pm.

8. Mr. Samant stated that he will also issue notices to the parties in the above proceedings who are not before this court so as to find out their willingness for participation in the mediation proceedings.

9. In view thereof, notwithstanding dismissal of the above C.R.A, parties are referred to mediation to Shri Rajiv Patil, Senior Advocate of this Court in respect of the above proceedings.

(R.G.KETKAR, J.)