

JPP

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

CIVIL APPLICATION NO. 198 OF 2016

in

CIVIL APPLICATION NO. 441 OF 2014

in

CIVIL REVN. APPLICATION NO. 508 OF 2010

Mrs. Vatsalabai Tukaram Kavade
through POA Holder

Mr. Tukaram Vishnu Kavade.

... Applicant/Petitioner.

V/s.

Mr. Jaywant Sarjerao Kavade & Ors.

... Respondents.

Mr. Mandar Limaye for the Applicant/Petitioner.

CORAM : N.M. Jamdar, J.

14 October, 2016.

Oral Order :-

Perused the Application and the averments made. The Civil Application is allowed in terms of prayer clause (a). The Civil Application No. 441 of 2014 is for restoration of the Writ Petition which was dismissed as against Respondent Nos.11 and 16. Perused the averments made and the cause made out. Considering the cause

made out, the Civil Application is allowed in terms of prayer clauses (a) and (b).

2. The Civil Revision Application is pending since the year 2010 and is taken for consideration forthwith on merits. In the Civil Revision Application an order under challenge is passed by the learned Civil Judge, Senior Division, Pune dated 5 March 2010 wherein the application filed by the Petitioner – Defendant No.13 for rejection of plaint under the provisions of Order 7 Rule 11 of the Code of Civil Procedure. Two grounds were raised in the application, firstly of limitation and secondly that the suit is barred by res-judicata. The learned Civil Judge has come to the conclusion that both these aspects will require evidence to be led and the matter will have to be considered at the time of trial.

3. As far as the issue of res-judicata is concerned, the learned Judge has held that the suit was withdrawn with permission of this Court and on that basis the suit came to be filed and therefore, the suit is not barred by res-judicata. The learned Counsel for the Applicant has sought to advance various contentions as regard the leave granted by this Court as well as the ground on which the principles of res-judicata are attracted. For this purpose, the learned Judge will have to examine the circumstances in which the earlier suit was withdrawn and the exact terms the liberty was granted and

therefore, the issue will have to be decided at the time of trial. As far as the issue of limitation is concerned, there is no error in the approach adopted by the learned Civil Judge considering the issues involved that the question of limitation in the present matter cannot be decided at this juncture and it is a mixed question of law. In fact, therefore, the learned Judge will have to decide the question of limitation at the time of trial.

4. Considering this position, since both the issues of res-judicata and limitation will have to be decided at the time of trial, being mixed question of law and fact, it is not necessary to interfere with the impugned order. All contentions of the parties on these two aspects are kept open. The Revision Application is accordingly disposed off.

(N.M. Jamdar, J.)