

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 966 OF 2014**

Shri Firdause Shapur Irani

..Applicant

Vs

Smt. Sulochana Bhalchandra
Patil and Ors

.. Respondents

Mr.A.Z.Mookhtiar , Advocate for Applicant.

Mr. G.S.Godbole, Senior Advocate, i/b Mr. Pavan Patil, Advocate
for Respondents no. 1 to 22.

Mr V.M.Parkar, Advocate for Respondents no.23 to 27.

Mr. Sandesh Patil, Advocate for respondents no. 47 and 48.

**CORAM : R.G.KETKAR,J.
DATE : 27/01/2016**

PC:

1. Heard Mr. A.Z.Mookhtiar, learned counsel for the applicant, Mr G.S.Godbole, learned senior counsel for respondents no. 1 to 22, Mr. V.M.Parkar, learned counsel for respondents no.23 to 27, Mr.Sandesh Patil, learned counsel for respondents no.47 and 48 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 4.5.2013 passed by the learned Jt. Civil Judge, Senior Division, Thane on preliminary issue framed at Exh.120 in Spl. Civil Suit No.545 of 2010. By that order, the learned trial Judge answered preliminary issue of limitation in the negative.

3. Mr. Mookhtiar submitted that respondents no.1 to 22, hereinafter referred to as 'plaintiffs', have instituted Special Civil Suit No.545 of 2010, inter-alia, for declaration, partition, perpetual injunction. Pending that suit, defendants no.29 and 30 filed application under section 9A read with Order VII, Rule 11(a),(b), (d). By order dated 3.1.2011, the learned trial Judge rejected the application. Defendants no.29 and 30, inter alia, contended that the suit does not disclose cause of action as contemplated by clause (a), plaint is liable to be rejected for not paying the requisite court fees as per clause (b) and that suit is barred by law, namely limitation, as per clause (d) of Rule 11 of Order VII. Aggrieved by the rejection of application, writ petitions were instituted in this Court. Writ Petitions and Civil Applications were disposed of on 30.7.2012 directing the trial Court to frame the issue of limitation under section 9A of C.P.C. and try the same as preliminary issue by giving opportunity to the parties to lead evidence.

4. In pursuance thereof, by the impugned order, the learned trial Judge rejected the application. It is against this order, defendant no.31 has instituted this Civil Revision Application.

5. Mr. Mookhtiar submitted that defendants no.23 to 27 have sold Survey no.601/4 (old) and corresponding new Survey no.167/8 to defendant no.31 on 26.1.1985. Defendant no.31 is

also put in actual possession of this property. The suit instituted in the year 2010 is hopelessly barred by limitation. He has taken me through the impugned order and more particularly paragraphs 14 and 15 thereof and submitted that the learned trial Judge committed serious error in answering the preliminary issue in negative. On the other hand, Mr. Godbole and Mr. Patil submitted that defendants no.23 to 27 have executed agreement of sale in favour of defendant no.31. In other words, defendant no. 23 to 27 have not executed sale deed in favour of defendant no.31. That part, Mr Godbole submitted that by prayer clause (e), the plaintiffs have sought declaration that various sale deeds/conveyances/consent terms/development agreements executed by defendants no. 1 to 10 in favour of defendants no. 11 to 32 and by defendants no. 12 to 20 in favour of defendants no.35 and 36 in respect of 1st to 8th portion of the suit properties as mentioned in paragraph 10(a) to (h) of the plaint, are legal and valid only upto the extent of undivided 1/4th share in the suit properties of late Mukund Jeeva Patil. In other words, they have not applied for cancellation of instruments set out in prayer clause (e) and have prayed only that these instruments are not binding upon the share of the plaintiffs. They also invited my attention to paragraphs 14 to 15 of the impugned order and submit that no case is made out for interfering with the

impugned order.

6. During the course of hearing of this application, Mr Mookhtiar submitted that defendant no.13 will be satisfied if the learned trial Judge is directed to frame issue on the question of limitation along with other issues and the issue of limitation may be decided along with other issues.

7. In view thereof, as also for the reasons recorded in paragraphs 14 and 15 of the impugned order, I do not find that any case is made out for invocation of powers under Section 115 of C.P.C. However, the learned trial Judge will frame issue of limitation and decide the same along with other issues while deciding the suit. All objections of the plaintiffs in that regard are expressly kept open. Civil revision Application is rejected. Order accordingly.

(R.G.KETKAR, J.)