

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.142 OF 2016

Chandrakant Baburao Shedage and another ... Applicants

Vs.

Sunil Duttatray Jadhav and others ... Respondents

Ms Gauri Jadhav i/b. Mr. Tushar J. Jadhav for Applicants.

Mr. Nitin P. Deshpande for Respondents No.1 to 4.

CORAM : R. G. KETKAR, J.

DATE : MARCH 08, 2016

P.C. :

Heard Ms Jadhav, learned Counsel for applicants and Mr. Deshpande, learned Counsel for respondents No.1 to 4 at length. On the oral application made by Ms Jadhav, leave to delete respondents No.5 to 35 on the ground that no relief is claimed against them, is granted. Amendment shall be carried out forthwith. Rule. Mr. Deshpande waives service for respondents No.1 to 4. At the request and by consent of the parties, Rule is made returnable forthwith and the Application is taken up for final hearing.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicants, hereinafter referred to as defendants No.27 and 28, have challenged the judgment and order dated 20.08.2013 passed by the learned Joint Civil Judge, Junior Division, Pune below exhibit-57 in Regular Civil Suit No.1195 of 2007. By that order, the learned trial Judge rejected the application filed by defendants No.27 and 28 at exhibit-57 under Order VII, Rule 11(d) of C.P.C. for rejection of the plaint on the ground that the Suit is barred by limitation.

3. Ms Jadhav submitted that respondents No.1 to 4, hereinafter

referred to as plaintiffs, have instituted Suit inter alia for declaration – that the compromise decree dated 22.09.1931 passed in Regular Civil Suit No.1072 of 1931 as also mutation entry No.344 made on 03.09.1938 is illegal and not binding on the plaintiffs; that the mutation entries No.1, 105, 543, 683, 834 and 1343 made on the basis of the sale deeds are illegal and not binding on the plaintiffs; and that all the sale deeds are illegal and do not confer any interest on defendants No.1 to 33 being the purchasers thereof. She submitted that in paragraph 2 of the plaint, plaintiffs asserted that the suit properties were owned by one Hari Mahatu Sutar. He had purchased those properties on 08.08.1919. In or about 1925, the said Hari expired. The properties were inherited by his widow Parvatibai and minor son Kaluram Hari Sutar. Parvatibai died in the year 1981. Kaluram died on 16.11.1990. During his lifetime, Kaluram had executed a Will on 26.05.1986. After the death of Kaluram, the properties were succeeded by his niece Ambika Dattatray Jadhav. The said Ambika died on 05.12.2004 and plaintiffs, being the legal representatives of the said Ambika, have acquired the suit properties.

4. Ms Jadhav submitted that in fact Kaluram had instituted Regular Civil Suit No.1072 of 1931 through his guardian mother Parvatibai Hari Sutar for possession. The suit was compromised on 22.09.1931. In the first place, during her lifetime, Parvatibai did not challenge the decree passed on 22.09.1931. Secondly, during his lifetime, Kaluram did not challenge the compromise decree after attaining majority. Thirdly, the suit properties are also not included in the Will dated 26.05.1986. If that be so, plaintiffs have no locus to challenge the decree passed in respect of the suit properties. The learned trial Judge, however, has not considered these aspects at all. The learned trial Judge proceeded to accept the case of the plaintiffs that plaintiffs acquired knowledge about

compromise decree some time in the year 2006 and Suit is instituted on 02.08.2007, which is within 3 years from the date of knowledge of alleged fraud. She, therefore, submitted that the impugned order is liable to be set aside thereby dismissing the Suit on the ground that it is barred by limitation.

5. On the other hand, Mr. Deshpande supported the impugned order. He invited my attention to paragraph 10 of the Will dated 26.05.1986. In paragraph 10 of that Will, it is recited that Kaluram has no immovable properties other than those mentioned in paragraph 6 and no other movable properties other than those mentioned in paragraph 7. However, in future, if it is found that other immovable properties belonging to the testator are not included then the same may be treated as part of this Will. He, therefore, submitted that even if the suit properties are not included specifically in the Will, in view of paragraph 10, these properties are also acquired by Ambika Jadhav on the basis of that Will.

6. 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, Kaluram had instituted Suit through his guardian mother Parvatibai. The Suit was compromised on 22.09.1931. In 1981, Parvatibai expired. During her lifetime, she did not challenge the compromise decree. That apart, Kaluram died on 16.11.1990. During his lifetime also, he did not challenge compromise decree after attaining majority. Perusal of the Will dated 26.05.1986, prima facie, does not indicate that the suit properties are included therein. If that be so, the moot question is whether the plaintiffs have any right, title and interest in the suit properties. The next question would be whether the plaintiffs have any cause of action and that plaint is liable to be rejected

under Order VII, Rule 11(a) of C.P.C. The next question is whether the Suit is barred by limitation. The learned trial Judge has observed that the plaintiffs acquired knowledge in the year 2006. Basically, the learned trial Judge has not adverted to the fact that during their lifetime, neither Parvatibai nor Kaluram challenged the decree. Apart from that, if the suit properties are not included in the Will, whether plaintiffs can be said to have acquired any interest therein. Since these aspects are not at all adverted by the learned trial Judge, the impugned order cannot be sustained and is liable to be set aside and is accordingly set aside. Application exhibit-57 filed under Order VII, Rule 11(d) of C.P. C. is restored to the file of the trial Court. The learned trial Judge will deal with the contentions recorded herein and any other contentions that may be advanced by the parties. In addition to whether the plaint is liable to be rejected under Order VII, Rule 11(d) of C.P.C., the Court will also consider whether the Suit is liable to be rejected under Order VII, Rule 11(a) of C.P.C. for want of any cause of action. The Court will also bear in mind the principles laid down in the Apex Court in the case of ***T. Arivandandam vs T. V. Satyapal***, 1977 SCC (4) 467. Rule is made absolute in the aforesaid terms with no order as to cost.

(R. G. KETKAR, J.)

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