

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.565 OF 2016**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr.V.S. Talkute a/w. S.R. Ghanavat,
Advocate for the applicants.

CORAM : R. G. KETKAR, J.
DATE : 28/11/2016

P.C.:

1. Heard Mr.Talkute, learned Counsel for the applicants, at length.
2. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicants, hereinafter referred to as the 'defendants' have challenged the judgment and order dated 19.8.2016 passed by the learned trial Judge below Exhibit-15 in R.C.S. No.394/2015. By that order, the learned trial Judge rejected the application made by the respondent for rejection of the plaint under Order VII Rule 11(a), namely, for want of cause of action and under Order VII Rule (11)(d), the suit is barred by limitation.
3. In support of this application, Mr.Talkute invited my attention to prayer clause (a) of the suit. By prayer clause (a), the plaintiff has sought declaration of ownership by adverse possession. He

submitted that in view of the decision of Apex Court in the case of ***Gurudwara Sahib v. Gram Panchayat Village Sirthala and another, (2014) 1 SCC 669***, such a suit is not maintainable. He submitted that unfortunately said decision was not cited before the learned trial Judge. He, therefore, seeks permission to withdraw this application with liberty to file fresh application.

4. Perusal of the plaint shows that by prayer clause (a), the plaintiff has claimed declaration of ownership by way of adverse possession. In view of the decision of Apex Court in the case of ***Gurudwara Sahib*** (supra), *prima facie* the plaintiff cannot claim such declaration. However in addition to prayer clause (a), the plaintiff has sought perpetual injunction restraining the defendants from causing obstruction to his possession. The plaintiff has asserted that he is in possession of the suit premises since 1977. The learned trial Judge has considered this aspect in paragraph-4 of the impugned order. The learned trial Judge has noted that the plaintiff has claimed two reliefs (1) ownership by way of adverse possession and (2) relief of perpetual injunction. Apex Court in the case of ***Sopan Sukhdeo Sable and others v. Assistant Charity Commissioner and others, (2004) 3 SCC 137*** has observed in paragraph-13 thus :

“13. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As

was observed by this Court in Roop Lal Sathi v. Nachhattar Singh Gill, (1982) 3 SCC 487 only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.”

5. In paragraph-5, the learned trial Judge has observed that the plaintiff has pleaded cause of action. Whether the pleadings in the plaint are true or false can be decided only after taking necessary evidence. Thus, the learned trial Judge held that the plaint cannot be rejected under Order VII Rule 11(a) of C.P.C. As the question of limitation is a mixed question of fact and law, the same can be decided on the basis of the evidence of the parties. The learned trial Judge further held that while deciding application under Order VII Rule 11, only the assertions made in the plaint are required to be taken into consideration.

6. In view thereof, I do not find that the learned trial Judge has committed any error in rejecting the application. Hence, application fails and the same is dismissed.

(R. G. KETKAR, J.)