

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

CIVIL REVN. APPLICATION NO. 868 OF 2013

1. Dattatray Ramling Kamble

2. Arjun Ramling Kamble

Both residing at – Degaon,

Tal. Pandharpur, Dist.Solapur.

3. Tukaram Namdeo Ghavane

R/o Chikhalthan, Tal. Karmala, Dist.Solapur. ... Applicants

v/s

Shri Ramhari Vitthalrao Patil,

R/o Plot No.13, J-6,

Ganga Residency Hadapsar, Pune-28. ... Respondents

Mr.Ajay Joshi for the applicants.

Mr.Sandeep Koregave i/by vaibhav Gaikwad for Resp. No.1.

Coram: N.M. Jamdar, J.

Dated: 23 September 2016

ORAL ORDER:

The Applicants have challenged the order passed by the learned Civil Judge, Junior Division, Pandharpur, dated 18 November 2013, disposing of the application taken out by the Applicant/Defendant No.1 under Order 7 Rule 11 of the Code of Civil Procedure, for rejection of the plaint. The impugned order is passed in the year 2013. The revision application is pending since then. The learned Civil Judge, after considering the plaint, has come to the conclusion that the limitation issue raised by the Applicants will require evidence as it is a mixed question of law and fact. The learned Civil Judge has

taken into account the nature of the agreement as also the contract between the parties and has found that it will be necessary to gather the intention of the parties and to decide the issue of limitation. The learned Civil Judge also kept in mind the question of taking permission from the competent authority. Considering these factors, the learned Judge has come to the conclusion that the application under Order 7 Rule 11-D cannot be rejected without considering the evidence that would be led by the parties and has deferred the issue to be considered along with other issues.

2 Having gone through the impugned order, the view taken by the learned Civil Judge that the issue raised by the Applicants will require further evidence, cannot be stated to be an impossible one. Merely because an another view is possible, does not calls for interference, neither it can be said that the learned Judge has failed to exercise jurisdiction or has exercised the jurisdiction incorrectly. The issue of limitation is already kept open by the learned Civil Judge.

3 The civil revision application is dismissed.

4 All contentions of the parties on merits are kept open.

(N. M. Jamdar, J.)