

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CIVIL REVISION APPLICATION NO.91 OF 2014

(Ibrahim Khan s/o Ismail Khan through L.Rs. Kubarabi wd/o Ibrahim Khan and others ..vs.. Abdul Bari s/o Haji Mohammad Qureshi through L.Rs. Suraiya Begum wd/o Abdul Bari and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.
DATED : 28-01-2016

Heard Shri M.R. Joharapurkar, learned Advocate for the applicants and Shri Masood Shareef, learned Advocate for the non-applicant Nos.1 to 7.

None appears for the other non-applicants though served.

2. The applicants/original defendant Nos.1(a) to 1(e) have filed this petition challenging the order passed by the trial Court rejecting the application (Exhibit No.54) filed by them under Order VII Rule 11(d) of the Code of Civil Procedure.

3. The predecessor of the non-applicant Nos.1 to 7 filed the civil suit praying for decree for declaration that the judgment and decree passed in Regular Civil Suit No.237/1988 is null and void. The plaintiff prayed for decree for declaration that in view of the sale-deed dated 16-10-1974, the plaintiff is the owner of the suit property. The plaintiff prayed for other reliefs also.

During the pendency of the suit, the original plaintiff died and the non-applicant Nos.1 to 7 are brought on the record being his legal heirs.

4. The defendant Nos.1(a) to 1(e) filed the application (Exhibit No.54) under Order VII Rule 11(d) of the Code of Civil Procedure contending that the decree in Regular Civil Suit No.237/1988 is passed on 24-09-1988 and even according to the plaintiff, he had knowledge of the decree in 2007 when he filed the objection in Regular Darkhast No.153/1999. According to the defendant Nos.1(a) to 1(e), the plaintiff made incorrect statement in paragraph Nos.7 and 8 of the plaint that he got knowledge about the passing of decree in Regular Civil Suit No.237/1988, in March 2011 and that the cause of action for filing the civil suit has arisen in March 2011.

The learned trial Judge, by the impugned order, has rejected the application filed by the applicants. The applicants being aggrieved by the order passed by the trial Court, has filed this writ petition.

5. The averments in paragraph Nos.7 and 8 of the plaint show that the plaintiff claims that cause of action for filing the civil suit has arisen in March 2011 when he got knowledge about passing of the decree in Regular Civil Suit No.237/1988. However, the facts on the record show that the plaintiff had filed objection in

Regular Darkhast No.153/1999 on 13-12-2007, opposing the execution of the decree passed in Regular Civil Suit No.237/1988. Be that as it may, nothing turns on this fact for the purposes of adjudication of the application (Exhibit No.54) filed by the defendant Nos.1(a) to 1(e) under Order VII Rule 11(d) of the Code of Civil Procedure. The plaintiff has made other prayers in the plaint, which are required to be considered by the trial Court. Shri M.R. Joharapurkar, learned Advocate for the applicants has submitted that the other prayers made by the plaintiff are ancillary and if the substantive prayer regarding declaration in respect of decree passed in Regular Civil Suit No.237/1988 cannot be granted as the claim is made after the prescribed period of limitation, the ancillary prayers also cannot be granted. In my view, this aspect is also required to be considered by the trial Court after giving opportunity to the parties to substantiate their contentions.

6. In view of the above, I see no reason to interfere with the impugned order. The civil revision application is dismissed. In the circumstances, the parties to bear their own costs.

JUDGE