

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO.61 OF 2017

1. Sambappa s/o Trimbakappa
Girwalkar, Age: 85 years,
Occ: Legal Practitioner,
R/o. Mitra Nagar, Latur,
Tq. & Dist. Latur.
2. Yogesh @ Trimbak s/o Sambappa
Girwalkar, Age: 38 years,
Occ: Agri., & Business,
R/o. Mitra Nagar, Latur,
Tq. & Dist. Latur. ..APPLICANTS

VERSUS

1. Nirmala w/o Balaji Salgar,
Age: 23 years, Occ: Household,
R/o. Deep Jyoti Nagar, Indira
Nagar, Latur,
Tq. & Dist. Latur.
2. Santosh s/o Shivaji Galande,
Age: 24 years, Occ: Agri.,
R/o. Sul Galli, Latur,
Tq. & Dist. Latur.
3. Satish s/o Shivaji Galande,
Age: 21 years, Occ: Agri.,
Tq. & Dist. Latur.
4. Shri. Gajanan Maharaj Mandir
Trust, Latur, Through its
Chairman
Panditrao s/o Bhagwanrao Kardile,
Age: 66 years, Occ: Legal
Practitioner, R/O. Shivaji Nagar,
Latur, Tq. & Dist. Latur. ..RESPONDENTS

(2)

Mr S.V. Natu, Advocate for applicants;
Mr S.S. Chillarge, Advocate for respondent Nos. 1
to 3;
Mr S.V. Gundre, Advocate for respondent No. 4

CORAM : N.W. SAMBRE, J.

DATE : 3rd JULY, 2017

ORAL ORDER :

Regular Civil Suit No. 364 of 2015 came to be initiated by the present respondent No.1 against the applicants for partition and separate possession.

2. The part of the suit property claimed to have been purchased by present applicants on 17th September, 1984 and based on the same, applicant No.1 herein, filed an application under Order 7 Rule 11 of the Code of Civil Procedure seeking dismissal of the suit against the applicants – original defendant Nos. 2 and 3. The said application came to be rejected by order dated 17th January, 2017. As such, this civil revision application.

(3)

3. Mr. Natu, learned Counsel for the applicants would urge that the suit was instituted in 2015 when the age of respondent-plaintiff is shown to be 23 years. According to him, considering the same to be correct and proper age, the suit at the behest of plaintiff – respondent No.1 is not maintainable, since barred by limitation. He would rely upon the provision of Section 6 of the Limitation Act for the said purpose.

4. Per contra, Mr. Chillarge, learned Counsel for the respondent-plaintiff would support the order on the ground that cause of action has disclosed in the plaint is continuous one and suit is rightly held to be maintainable. He would then urge that the issue of limitation is mixed question of fact and law and as such, evidence is required to be recorded for the said purpose and the Court may look in to the said issue at the time of final decision.

(4)

5. Considered rival submissions. What is required to be noted is, admittedly the applicant has purchased suit property from the late father of respondent No. 1 on 17th September, 1984, on which date even neither the applicant nor original defendant Nos. 4 and 5, her real sisters were born. As such, on the date of sale deed, no right was created in favour of the plaintiff. As such, suit against present applicants, particularly for setting aside sale deed dated 17th September, 1984, seeking partition of the suit property, in my opinion, is not maintainable.

6. Learned trial Court, while dealing with the said issue though has observed that the issue of limitation is mixed question of fact and law, however, only on the count that plaint disclosed cause of action, has rejected the application moved under Order 7 Rule 11 of the Code of Civil Procedure.

(5)

7. In my opinion, having answered issue of limitation in favour of applicant in the backdrop of above observation, Regular Civil Suit No. 364 of 2015 initiated against the present applicants – original defendant Nos. 2 and 3 is required to be held to be not maintainable. As such, the application moved under Order 7 Rule 11 of the Code of Civil Procedure at Exhibit-22 is liable to be allowed by quashing the order dated 17th January, 2017 passed therein by learned Court below.

8. Civil Revision Application stands disposed of in above terms.

(N.W. SAMBRE, J.)

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