

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

CIVIL REVISION APPLICATION NO. 102 OF 2017

Shri Shri Infrastructure .. **Applicant.**
Pvt.Ltd. Through its Director, (Ori.Deft. No.6.)
Mr. Aditya Shriram Khatod, Age
years, Occ. Business, R/o. 77,
Jainagar, Near Axix Bank,
Jalgaon, Tq. & Dist. Jalgaon.

VERSUS

- 1 Anand Shanti Builders & ..**Respondents**
Developers.
A Registered Partnership Firm,
Through its Partners.
- (i) Mr. Rajesh Shantilal Lalwani,
Age 58 years, Occ. Agriculture
and business, R/o. Devdarshan
Apartment, Jainagar Jalgaon,
District Jalgaon.
- (ii) Mr. Mukesh Shantilal Lalwani
Age 61 years, Occup. Agril. &
Business, R/o. Chandram Lek
City Road, Shirsoli Road,
Jalgaon, District Jalgaon.
- 2 Mr. Dilip Ananda Kolhe, Age 61
years, Occ. Business, R/o. 78
Housing Society, in front of
Nutan Maratha College,
Jalgaon, Tq. & Dist. Jalgaon.
- 3 Sau. Varsha Dilip Kolhe, Age
55 years, Occup. Business,
R/o. as above.

- 4 Shri. Rajas Dilip Kolhe, Age Major, Occup.Business, R/o. As above.
- 5 Sau. Sudha Harshad Shah, Age Major, Occup. Business, R/o. 115 Zilla Peth, Jalgaon, Tq. & Dist. Jalgaon.
- 6 Sau. Jyotiben Kirtikant Shah, Age Major, Occup. Business, R/o. as above.
- 7 Mr. Satyanarayan Gopaldas Khatod, Age 60 years, Occ. Agril. & Business, R/o. Satyaprem 22 Shrihari Nagar, Ganesh Colony Parisar, Jalgaon, Tq. & Dist. Jalgaon.
- 8 Anand Shanti Builders and Developers, R/o. 78 Housing Society, Jalgaon City, Jalgaon, Tq. & Dist. Jalgaon.

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Mr.V.D. Sapkal, Advocate, for the Applicant.

Mr. Girish S. Rane, Advocate for respondent 1(i),

Mr. S.B. Yawalkar, Advocate for respondents No.2 to 4.

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CORAM : K.L. WADANE, J.

RESERVED ON : 21.09.2017.

PRONOUNCEMENT ON : 26.09.2017.

JUDGMENT :-

1. With the consent of the parties this Civil Revision Application is taken up for final hearing.

2. Parties to the revision application are referred to their original status.

3. This Revision Application is filed by the original defendant No. 6 against the order passed below Exh. 32 in Special Civil Suit No. 09/2017 dated 09.03.2017. Application Exh. 32 was submitted by the defendant No. 6 under the provisions of Order VII Rule 11 of the Code of Civil Procedure.

4. The plaintiffs have filed suit through its partners seeking declaration that the sale-deed bearing day-book No. 2377/2013 in respect of plots no. 51, 52 and 53, sale-deed bearing day-book No. 2378/2013 in respect of plot No. 50 and sale-deed bearing day-book No. 3362/2013 in respect of plot No. 49 are without the consent of the plaintiffs and therefore they are illegal. The plaintiffs also sought the possession of the suit property. According to the plaintiffs there was dispute between the partnership firm and therefore the Application No. 08/2014 was filed before the High Court Bench at

Aurangabad and this Court by an order dated 03.10.2016 appointed one retired District Judge Smt. Suman Mahajan as Arbitrator. An Enquiry Application under section 9 of the Arbitration and Reconciliation Act, 1996 was filed by the plaintiffs before the District Judge Jalgaon bearing Application No. 38/2015 and same is pending. According to plaintiffs the dispute in the Arbitration Proceedings and the civil suits are different.

5. It is further contended that, the defendants No. 1 to 3 have sold the suit property in favour of defendant No. 6 without the knowledge and consent of the plaintiffs. In which application Exh. 5 for interim relief is also presented. The defendant No. 6/present revision applicant filed its reply below Exh. 30. So also he filed application Exh. 32 under the provisions of Order VII, Rule 11 of the Code of Civil Procedure. After hearing both the sides the Trial Court has rejected the application. Hence, this Revision Application.

6. I have heard the arguments of Mr. V.D. Sapkal appearing for the revision applicant/defendant No. 6, Mr. Girish S. Rane, learned counsel appearing for the respondent 1(i)/original plaintiff and Mr. S.B. Yawalkar, learned counsel appearing for the respondents No. 2 to 5/original defendants No. 1 to 4.

7. Mr. Sapkal, learned counsel appearing for the applicant/defendant No. 6 has relied upon the following case laws.

- (1) 2016 DGLS (Bom.) 99 (Sushil Sohanlal Agrawal V/s. Harishankar Ramnivas Sharma and another.
- (2) (2016)10 Supreme Court Cases 386 (A. Ayyasamy V/s. A. Paramsivan and others.
- (3) A.I.R. 1998 Supreme Court 634 (I.T.C. Limited V/s. Debts Recovery Appellate Tribunal and others).

8. Looking to the contents in Exh. 32 and the say filed to that application, this Court has considered the rival pleadings of the parties

mentioned in plaint as well as Exh. 32 and it is not necessary to enter in the other controversy as argued by the learned counsel for the plaintiffs as well as defendant No. 6.

9. During the course of arguments Mr. Sapkal submitted that the alleged transaction took place in the year 2013 and for declaration and cancellation of sale-deed limitation is of three years and therefore the suit is barred by limitation. Mr. Sapkal, learned counsel, further argued that the dispute between the parties is going on before the Arbitrator and before the learned District Judge Jalgaon. In that proceedings the plaintiffs have remedy to ask for interim relief against the defendants.

10. Mr. Sapkal, learned counsel, further argued that, from the documents placed on record and from the contents of the plaint itself the suit of the plaintiffs is time barred.

11. As against this Mr. Rane, learned counsel

appearing for the plaintiffs argued that, the defendants No. 1 to 3 have executed the sale-deed in respect of plots mentioned above behind back of the plaintiffs and without knowledge and consent of the plaintiffs. Therefore, limitation for filing the suit for cancellation of sale-deeds runs from the date of knowledge.

12. The question as to the limitation has to be determined and decided on the basis of the averments in the plaint itself. It is not necessary to consider the other documents on record and the defence raised by the defendants. So during the course of arguments Mr. Sapkal, learned counsel repeatedly harping upon the aspect of the contents of the plaint particularly in para No. 11, wherein; it is contended that, the defendant No. 1 with the consent of the plaintiffs No. 1 and 2 and defendant No. 7 have sold out some property of the partnership firm. However, some properties were sold without the consent and in spite of the said illegal transaction the defendant No. 7 issued letter dated 20.09.2013,

16.12.2013. So also, the plaintiffs issued letter dated 26.11.2013 to which the defendants No. 1 to 3 have replied on 18.1.2014. So mainly relying upon these contents in para No. 11 of the plaint, Mr. Sapkal, learned counsel has argued that on the basis of these documents, the plaintiffs were well aware about the execution of the sale-deeds by defendants No. 1 to 3 in favour of the defendant No. 6. Therefore, now it is necessary to refer these documents. Initially, reference has to be made to the document i.e. letter issued by the defendant No. 7 to the defendant no. 1 dated 20.09.2013. This letter is in the form of notice and the copy of the same is addressed to the plaintiffs No. 1 and 2. On perusal of the same it appears that the defendant No. 7 has made grievance about the transaction of plot No. 13 and 14 and the amalgamation of area of 198.10 square meter from city Survey No. 408 and 409 into City Survey No. 410. There is no remote reference about the execution of sale-deed in favour of defendant No. 6.

13. Another letter is issued by the defendant No. 7 to defendants No. 1 to 3 dated 16.12.2013 wherein it is informed by defendant No. 7 that in spite of communication, the defendants No. 1 to 3 have alienated some properties without the consent of defendant No. 7. In this letter also there is no mention about the disposal of the plot No. 49 to 53 in favour of defendant No. 6.

14. Another letter dated 26.11.2013 issued by the plaintiffs to the defendants No. 1 to 3 and defendant No. 7, in which, there is reference about the conversion of agricultural land into non-agricultural land of Sy. No. 410/2/2B/2/1B/2/1A+406+409. In this letter issued by the plaintiffs a grievance is made about the conversion of the agricultural land into non-agricultural land. Here in again there is no reference about the disposal of the aforementioned plots No. 49 to 53.

15. In the plaint it is the contention of the plaintiffs that they came to know about the execution of the sale-deed only on 11.01.2017. Reference has

to be made to the copy of the notice issued by the plaintiffs to the defendants No. 1 to 3 and defendant No. 6 dated 27.12.2016.

16. On perusal of the contents of the notice dated 27.12.2016, particularly, in para No. 13, it appears that, plaintiffs have mentioned about the disposal of the plot No. 49 to 53 in favour of the defendant No. 6. Thus, these contents of the notice were based upon the information collected by the plaintiffs. Therefore, there is no reason to believe that the plaintiffs have knowledge about the execution of sale-deed at least on 27.12.2016. Even if, this document is taken into consideration, then at the most one can say that the plaintiffs were having knowledge about the execution of the sale-deed on 27.12.2016. No documentary evidence is placed on record to show that the plaintiffs were having knowledge about the transactions earlier than the notice dated 27.12.1016. The contents of para no. 11 of the plaint are based upon the document earlier referred, other than the notice, issued by the

plaintiffs on 27.12.2016.

17. On careful perusal of the content of the earlier documents referred above, no where it is clear from the record that the plaintiffs got knowledge about the execution of the sale-deeds at earlier point of time. Even presumed that the plaintiffs were having knowledge about the execution of the sale-deed on 27.12.2016, still prima facie it appears that the suit of the plaintiffs is within limitation. The learned Trial Court while deciding the application Exh. 32 has observed that the question of limitation is mix question of facts and law and therefore it has to be determined at the time of disposal of the suit after evidence is adduced by both the sides.

18. In this connection Article 56 of the Limitation Act, 1963, is an appropriate provision, provides the time limit of three years from the date of execution of the document or from the date on which the plaintiffs have got first knowledge.

Furthermore, the second prayer of the plaintiffs is for possession of the suit property after cancellation of sale-deeds.

19. In view of the above, the reasons recorded by the learned Trial Court while rejecting the application Exh. 32 prima-facie appears that, there is no illegality, impropriety and incorrectness with the order passed by the learned Trial court. Consequently, there is no merit in this Civil Revision Application. Therefore, it is liable to be dismissed. Accordingly it is dismissed with no order as to costs.

The above observations are made prima-facie and Trial Court shall not get influenced with the same at the time of disposal of the suit on merits.

(K.L. WADANE, J.)

20. After pronouncement of the judgment the

learned counsel appearing for the applicant submits that direction be given to the Trial Court to dispose of the suit as early as possible. Hence, Trial Court is directed to dispose of the suit as early as possible.

(K.L. WADANE, J.)

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