

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

WRIT PETITION NO. 10298 OF 2017

MAHALING VALJNATH BAVAGE AND ANOTHER
VERSUS
SHRIGANESH UTTARESHWAR WARAD AND OTHERS

...
Advocate for Petitioners : Shri Ashtekar R.K.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd August, 2017

Per Court:

1 The Petitioners are aggrieved by the order dated 21.01.2017 by which the application Exhibit-23 in RCS No.178/2016 filed by the Petitioners/ Defendants has been rejected.

2 The thrust of the Petitioners' submissions is that the father of the Plaintiffs had sold a portion of the property on 26.07.1994 to these Petitioners. It is claimed that the possession of the property was also handed over to the Petitioners. The original landlord Uttareshwar Warad passed away in 2014. As the Plaintiffs were performing the last rites of the deceased person, the Petitioners are alleged to have obstructed the Plaintiffs from entering the said land on the ground that the suit land does not belong to the Plaintiffs and it belongs to the Petitioners. After experiencing this incident, the Plaintiffs moved the application under the

Right to Information Act, 2005 and thereafter, preferred RCS No.178/2016.

3 The Petitioners, who are Defendant Nos.3 and 4, have moved an application under Order 7 Rule 11 of the Code of Civil Procedure praying for the rejection of the suit on the ground that it suffers from limitation. The contention is that as the sale transaction took place on 26.07.1994, the suit preferred by the Plaintiffs is unsustainable. It is contended that Article 109 of the Limitation Act would be squarely applicable to the suit as the said transaction is more than 12 years old even if it is presumed that the suit property is ancestral property.

4 It appears that when the alleged sale transaction took place, Plaintiff No.1 was about 14 years old, Plaintiff No.2 was about 15 years and Plaintiff No.3 was about 20 years. Plaintiff No.1 is the son and Plaintiff Nos.2 and 3 are the married daughters of the deceased Uttareshwar.

5 Considering the rural background of these persons, it requires no debate that the married daughters hardly have any say in the agriculture and economic affairs of the father. Plaintiff No.1 was a school going boy and is said to be away from the village for his higher education. It is only during the funeral of their father that Plaintiff No.1 realized that his father is said to have sold the portion of the property which is said to be ancestral property. Thereafter, upon collecting the documents under the

Right to Information Act, the suit has been preferred which indicates that the Plaintiffs gathered knowledge of the purported sale only in 2014.

6 Considering the amplitude of Article 109 of the Limitation Act, it is also necessary for these Petitioners to prove before the Trial Court as to when did they receive the possession of the suit land. This aspect needs to be dealt with by the Trial Court.

7 The Petitioners pray that the suit be rejected under Order 7 Rule 11-D of the Code of Civil Procedure, at the very outset. The Trial Court has concluded that all the above aspects are mixed questions of fact and law and can be considered after recording of evidence. Article 109 prescribing 12 years of limitation would be attracted from the date the Alienee takes possession of the property. A mere registration of the sale deed or mutation entries or revenue entries would not establish the exact date of taking possession of the property.

9 All above aspects need adjudication and therefore, in my view, the impugned order cannot be termed as being perverse or grossly erroneous. Merely because a different view is possible, would not lead to setting aside the impugned order.

10 Considering the above, this Writ Petition being devoid of merit is, therefore, dismissed.