

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 99 OF 2015

Shri Mukund Prabhakar Sonar
Alias Mahesh alias Mukund Vasant Dantale ... Applicant
Vs.
Sau. Meena Mohan Bagul & Ors. ... Respondents

Mr.Sagar Kursija i/b. Mr. T.D. Deshmukh, for the applicant.
Ms. Asha Jha a/w Mr. Himanshu Kode, for the respondents.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 6th October, 2017.

P.C.

Heard. Rule. Rule made returnable forthwith with consent of the parties.

2. The applicant herein happens to be the original defendant No.1 in Special Civil Suit No.225 of 2013 pending before the Civil Judge, Senior Division, Pune.

3. The applicant impugns the order dated 16.12.2014 passed by the learned Civil Judge, S.D. Pune, thereby rejecting his application filed under Order VII Rule 11(d) of the C.P.C. According to the applicant, the plaint deserved to be rejected as there was a bar of limitation in filing the said suit. The applicant herein has therefore filed an application below Exhs. 34 and 57 calling upon the Court to frame preliminary issue under

Section 9A. Accordingly, an issue was framed as follows :-

“Whether suit is hit by law of limitation as asserted by defendant no.1 and 4 vide Exhs. 57 and 34 respectively ?”

4. The learned Court has rightly observed that although the Will of deceased Laxman Ganeshssheth Dantale is dated 23.1.1946, the plaintiff had got the knowledge about the same only in 2011 and, therefore, the suit was filed within limitation. The learned Court has rightly observed that since the plaintiff had the knowledge about the adoption deed only in the year 2011, the right had accrued upon her in the year 2011. As is stated in the pleading of the plaint, the suit is filed within three years for declaration to claim her title on the entire suit property as mentioned in the plaint. The plaintiff has also claimed the relief of partition. The suit properties of deceased Laxman Ganeshsheth Dantale are self-acquired properties. Hence, after the demise of Laxman Dantale, the plaintiff would be entitled to a share in the said property.

5. The learned counsel for the applicant vehemently submits that in fact, the applicant had knowledge about the Will in the year 2004. The learned counsel to substantiate his contention, has placed reliance upon the legal notice issued by the plaintiff dated 3.6.2005. Upon perusal of the said

legal notice, it is clear that the plaintiff had addressed the said letter to her sister-in-law stating therein that she has learnt from the reliable sources that the late Ganeshsheth had prepared a Will in his lifetime. She has reiterated that despite several requests, they have not given her the copy of the said letter and, therefore, she is constrained to issue a legal notice to her. It is, therefore, clear that the plaintiff had not in fact seen the document.

6. It is pertinent to note that it is specifically contended in the plaint itself in paras 12 and 13 that the plaintiff had approached the City Survey Office on 31.3.2011 and at that time, the son of defendant No.3 had objected the limitation. It is at that stage, that the plaintiff had learnt that there was an adoption deed besides the Will. It is specifically contended that the said adoption deed is sham and bogus.

7. The learned counsel for the respondents had vehemently opposed the grant of relief and has contended that the learned Judge has rightly observed that the issuance of a notice seeking the copies of the Will Deed cannot preclude the plaintiff to file the suit.

8. Be that as it may, the reasons assigned by the Addl. Judge,

Small Causes Court & C.J.S.D.Pune do not call for any interference. The issue of limitation has rightly been negated by the C.J.S.D., Pune. Hence, no case is made out for any relief whatsoever. The Application is dismissed. The learned trial Court shall proceed with further stages of the suit forthwith. Rule is discharged.

9. Office to communicate this order to the concerned Court forthwith.

[SMT. SADHANA S.JADHAV, J.]