

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 13991 OF 2016

Smt. Smita Vinod Ghosalkar
And Anr.

...Petitioners

Versus

Shri. Sharad Dashrat Ghosalkar

...Respondent

....

Mr. Tejesh Dande a/w. Bharat Gadri, Akshay Tapir i/b. Tejesh Dande & Asso., for the Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 01st FEBRUARY, 2017

P.C.

1. Heard Mr. Tejesh Dande, learned Counsel for the petitioners, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'defendants', have challenged the judgment and order dated 29.2.2016 passed by the learned Civil Judge, Junior Division, Shrivardhan below Exhibit-26 in R.C.S. No.24/2015. By that order, the learned trial Judge held that the suit is not barred by limitation. In support of this Petition, Mr. Dande submitted that the respondent, hereinafter referred to as 'the plaintiff', has

instituted suit *inter alia* praying for declaration that the sale deed dated 31.3.2010 executed in favour of the defendants is not binding on the plaintiff and his family; for perpetual injunction restraining the defendants from causing obstruction to the plaintiff's possession as also restraining them from obstructing from carrying on his business. He submitted that the plaintiff has not prayed for partition of the suit property. The relief of injunction is purely consequential based on prayer clause (a). The suit is instituted in the year 2015 and the same is clearly barred by limitation. He submitted that the learned trial Judge held that the prayer (b) pertaining to injunction is not consequential and is substantive relief. That finding is erroneous. He has taken me through the evidence on record adduced by the parties while deciding the preliminary issue.

3. I have considered the submissions advanced by Mr. Dande. I have also perused the material on record. In paragraph-9 of the impugned order, the learned trial Judge has observed that the plaintiff has claimed two substantive and separate reliefs one in the form of declaration in terms of prayer clause (a) and another in the form of perpetual injunction as per prayer clause (b). The relief in terms of injunction is based on

the plaintiff's possession over the suit property. It, therefore, cannot be said that the relief of injunction is consequential relief. The learned trial Judge further came to the conclusion that the suit is governed by Article 113 and not by Article 58. As the plaintiff has contended that the cause of action accrued in May, 2015 and accordingly the suit is instituted, it cannot be held to be barred by limitation. I do not find any fault with the reasoning given by the learned trial Judge .

4. For the reasons recorded in paragraphs-9 to 11 of the impugned order, no case is made out for interfering with the impugned order. Hence, Petition fails and the same is dismissed. Liberty is reserved to the defendants to file application for disposal of the suit in a time bound manner. If such an application is made, the learned trial Judge will pass appropriate order bearing in mind that the dispute is between the family members. Order accordingly.

(R. G. KETKAR, J.)