

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.440 OF 2015

Devram Nana Palwe and others	...	Applicants
Vs.		
Murlidhar Yadav Pawar and others	...	Respondents

Mr. Sanjay Shinde for Applicants.
Mr. Sachin Gite for Respondents No.1 to 5 and 7.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 30, 2017

P.C. :

Heard Mr. Shinde, learned Counsel for applicants and Mr. Gite, learned Counsel for respondents No.1 to 5 and 7. By order dated 27.07.2015, notice for final disposal was issued to respondents and parties were put to notice that subject to the time constraint and convenience of the Court, Application will be disposed of finally at the stage of admission. It was also made clear that despite service if respondents fail to appear, the Court would proceed to decide the Application on its own merits. Office remark shows that respondent No.6 is served. However, none appears on his behalf. Rule. Mr. Gite waives service. Having regard to the narrow controversy raised in this Application as also at the request and by consent of the parties, Rule is made returnable forthwith and the Application is taken up for final hearing.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original defendants No.1 to 8 have challenged the judgment and order dated 09.03.2015 passed by the learned 5th Joint Civil Judge, Junior Division, Nashik below exhibit-24 in Regular Civil Suit No.981 of 2012. By that order, the learned trial Judge rejected the application filed by the applicants under Order VII,

Rule 11(d) of C.P.C.

3. Mr. Shinde submitted that respondents No.1 and 2 herein have instituted Suit on 03.03.2012 for declaration that sale deeds dated 29.01.1963 and 02.02.1970 executed by their predecessor-in-title in favour of defendant No.1 are illegal, null and void. Defendants filed application on 26.08.2013 under Order VII, Rule 11(d) for rejection of plaint on two grounds, namely (i) in view of provisions of Section 36C of the Maharashtra Land Revenue Code, 1966 (for short 'M.L.R.C.'), Civil Court has no jurisdiction to entertain and try the Suit and (ii) the Suit is barred by limitation and therefore, plaint is liable to be rejected under Order VII, Rule 11(d). He states that he is not pressing the point based on Section 36-C of the M.L.R.C. However, the learned trial Judge has held that the Suit is not barred by limitation and it is a mixed question of law and fact and for which evidence is required to be adduced.

4. On the other hand, Mr. Gite supported the impugned order. He has taken me through the copy of the plaint.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As far as the point of limitation is concerned, in paragraph 11, the learned trial Judge has observed thus,

“11] Though the defendants have raised the points of limitation and accordingly submitted that as the suit is barred by the limitation, cannot be entertained. With respect to this, I would like to mention here that the question related to the limitation is the mixed question of law that can be only decided after entire evidence and therefore, at this juncture, there is no merits to discuss whether the suit is within the limitation? Hence I answer to point No.2 in negative and for point No.3 I proceed to pass the following order.”

6. It is relevant to note that Suit is instituted on 03.03.2012 challenging the sale deeds dated 29.01.1963 and 02.02.1970. Perusal of paragraph 11 extracted hereinabove shows that the learned trial Judge has not given any reason save and except to observe that the issue of limitation is a mixed question of law and fact and the same can be decided only after recording the evidence. The learned trial Judge has not dealt with submission of defendants No.1 to 8 about bar of limitation in view of dates of the sale deeds and date of institution of the Suit. In view thereof, the impugned order is liable to be set aside thereby directing the trial Court to decide the application exhibit-24 only as regards point of limitation. Hence, the following order:

- a. As far as the contention based on Section 36C of the M.L.R.C. is concerned, that shall not be agitated before the trial Court. The learned trial Judge will decide only the point of limitation in accordance with law;
- b. application exhibit-24 is restored only for deciding point of limitation;
- c. Rule is partly made absolute in the aforesaid terms with no order as to costs.

7. Order accordingly.

(R. G. KETKAR, J.)