

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**CIVIL REVISION APPLICATION NO. 484 OF 2016**

Kishor Dhanjibhai Patel & Anr.

..Applicants

Vs

1. Savita Jagdish Kharote and  
Ors.

.. Respondents

Mr. Sham V. Walve, Advocate for Applicants.  
Mr. D.S.Pagare, Advocate for Respondents.

CORAM : R.G.KETKAR,J.  
DATE : 11/01/2017

**PC:**

1. Heard Mr.Sham Walve, learned counsel for the applicants and Mr.D.S.Pagare, learned counsel for the respondents at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicants, hereinafter referred to as 'defendants', have challenged the Judgment and order dated 18.6.2016 passed by the learned Civil Judge, Jr.Dn., Jawhar below Exhibit -18 in Regular Civil Suit No. 49 of 2015. By that order, the learned trial Judge rejected the application made by the defendants under Order VII, Rule 11(a) (plaint does not disclose a cause of action) and (d) (suit appears from the statement in the plaint to be barred by law of limitation).

3. In support of this application, Mr. Walve submitted that on 26.8.2008, Jagdish Kharote, husband of plaintiff no.1 and father of plaintiffs no.2 and 3, executed Visar Pavti in favour of defendant no.1. Clause 4 thereof recited that Jagdish Kharote

received Rs.51,000/-. Clause 11 recorded that the said Visar Pavti is binding on the vendor as also his legal representatives. Plaintiffs no. 1 and 2 are consenting party to Visar Pavti.

4. On 18.9.2008, Agreement of sale was executed by Jagdish Kharote in favour of defendants. Plaintiffs no.1 and 2 as also sister of Jagdish are consenting party to the said agreement of sale. On 25.8.2008, public notice was issued through Advocate and the said notice bears names and signature of plaintiffs and Ratnaprabha, sister of Jagdish. He submitted that the plaintiffs have relinquished their right, title and interest in the suit property. In fact, Jagdish had received entire consideration and the suit is instituted in 2015 challenging the sale deed dated 22.10.2008. He submitted that the plaint is liable to be rejected as it does not disclose cause of action as contemplated by Order VII, Rule 11(a) as also is clearly barred by Article 59 of the Limitation Act. As the suit is not instituted within three years from 22.10.2008, plaint is liable to be rejected on the ground that suit is barred by law of limitation.

5. On the other hand, Mr.Pagare supported the impugned order. He submitted that while considering the application under Order VII, Rule 11, the Court has to consider the only averments made in the plaint and not defence set up by the defendants. He invited my attention to paragraphs 16 and 24 and submitted that the plaintiffs acquired knowledge of execution of the sale deed

only on 25.8.2015 and accordingly the suit is instituted on 30.9.2015. He submitted that in view of Article 56 of the Limitation act, suit is rightly held to be within limitation.

6. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. The learned trial Judge has held that the plaintiffs have alleged that the sale deed is obtained without free consent of Jagdish who was suffering from brain tumor since 2005. They have also claimed declaration that the sale deed is fabricated and forged document and accordingly is null and void and is not binding on the plaintiffs. The learned trial Judge observed that the suit falls under Article 56 of the Limitation Act and period of 3 years will begin when the issue or registration becomes known to the plaintiffs. From perusal of paragraphs 16 and 24, it is evident that the plaintiffs have averred that they have acquired knowledge about this document for the first time on 25.8.2015. In view thereof, it cannot be said that the suit is barred by limitation. Equally, it cannot be said that plaint is liable to be rejected under Order VII, Rule 11(a) as it does not disclose cause of action. In view thereof, I do not find that any case is made out under Section 115 of C.P.C. Hence, Application fails and the same is dismissed.

(R.G.KETKAR, J.)