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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

***SECOND APPEAL NO.536 OF 2017
WITH
CIVIL APPLICATION NO.142 OF 2017***

Hema Dhairyashil Sankal & Anr.	..Appellants.
V/s.	
Atul Ishwardas Chordiya & Ors.	..Respondents.

Mr.Sidheshwar N.Biradar for the appellants.
None for the respondents.

CORAM: NITIN W.SAMBRE, J.

DATE : DECEMBER 4, 2017

PC.:-

The appellant No.1, who claims to be the married daughter of respondent No.3 had filed Regular Civil Suit No.1046/2014 questioning the registered sale deed dated June 12, 2000 and further transfer of the suit property by the purchaser on December 6, 2007 in favour of respondent Nos.1 and 2.

2. Respondent Nos.1 and 2 who are the purchasers of the suit property filed an application under Order VII Rule 11(d) of the Civil Procedure Code claiming that even if the pleadings in the plaint are accepted as it is to be admitted, the fact remains that the suit is not

within limitation. The provisions of Article 60 of the Limitation Act, 1963 is to be relied upon so as to substantiate the plaint. The application moved under the provisions of Order VII Rule 11(d) vide Exhibit-30 came to be allowed vide order dated March 9, 2015 passed by the third Joint Civil Judge, S.D. Pune. The trial Court rejected the plaint on the ground that the suit was barred by limitation.

3. The appellant / plaintiff feeling aggrieved preferred Civil Appeal No.248/2015 which suffered dismissal on August 17, 2016 by the Ad-hoc District Judge, Pune. As such, this Second Appeal.

4. Learned counsel for the appellant Mr.Biradar tried to impress upon this Court by relying upon Article 112 of the Limitation so as to plead that the suit filed by the appellant was for cancellation / setting aside sale deeds and as such, the limitation should have been counted from the date of knowledge i.e. just before the filing of the suit in the year 2014. He tried to impress upon this Court by inviting attention to the pleadings in the plaint to bring his suit within the ambit of section 60 of the Limitation Act. In addition, by relying upon the judgment of the Apex Court in the case of ¹*Export Credit Guarantee Corporation of India Ltd. V/s. T.Mathew and others* would urge that the

¹ 2014(5) Mh.L.J. 657

issue of limitation is a mixed question of fact and law and is required to be adjudicated at the stage after filing of the written statement by framing a preliminary issue. In addition, he would also invite attention of this Court to the judgment in the matter ²*Vinod Anand V/s. Mr.Chandrashekhar Madhav Joglekar and Ors.* In paragraph 11, it is observed that such order of rejection of plaint is not permissible.

5. Considered these submissions in the light of the pleadings, the present plaintiff in paragraph 3 of the plaint has pleaded that suit property is ancestral property of defendant Nos.3 to 8. According to him when property was sold in favour of defendant No.1, plaintiff No.1, daughter of defendant No.3 and plaintiff No.2 were minor. The suit property being ancestral property, and in view of minor's share in it, ought not to have been transferred without the permission of the Court or without establishing the legal necessity. This being so, the claim of learned counsel for the appellant that the suit is within limitation as prescribed under Article 60 of the Act is required to be rejected for the reason that the suit in question is on behest of a minor questioning the sale deed based on the ground of legal necessity and authority of law.

6. So far as reliance placed on the two judgments of this Court

in the matter of *Export Credit Guarantee Corporation of India Ltd. and Vinod Anand* (supra) are concerned, both these judgments are in the backdrop of pleadings raised by the parties in the plaint in the said matters.

7. The law laid down in these these two judgments if appreciated in the backdrop of the case of present the appellant / plaintiff, the trial Court so also the first Appellate Court while dealing with the plea claimed that the suit is barred by limitation and presumed the claim of the appellant as it is to be correct for deciding the issue of limitation. The sale deed of 2000 is for the first time sought to be question by the appellants / plaintiffs in 2014. It is the claim of appellant No.1 that when the sale deed was executed in the year 2000, she was of the age of 17 years and as such, she could have attained majority in 2002 or at the most 2003, Article 60 of the Limitation Act prescribes limitation of three years. The suit initiated at the behest of minor for setting aside the said transaction provides that the limitation is to be calculated from the date of attaining majority by such minor. Both the Courts below having presumed the claim of the appellants to be correct as is described by the plaint noticed that suit could have been filed atleast by 2005 or 2006 and in any case, the suit filed in the year 2014 at the behest of the appellant is rightly held to be barred by the

limitation.

8. The trial Court, as such, in my opinion, was right in allowing the application preferred under Order 7 Rule 11(d) of the Civil Procedure Code.

9. No interference is warranted by the Second Appellate jurisdiction. The appeal lacks merits and hence dismissed.

10. In view of the dismissal of the appeal, the civil application does not survive and hence the same is disposed of as such.

(NITIN W.SAMBRE, J.)