

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 70 OF 2018

BALAJI SUDHAKAR JADHAV AND ANOTHER
VERSUS
MAHADABAI CHANDAR SURVASE AND OTHERS

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Advocate for Petitioners : Shri Deshpande Dhananjay P.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: June 11, 2018

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PER COURT :-

1. The applicants are aggrieved by the impugned order dated 17.2.2018, by which, the trial Court has rejected application Exhibit 75 filed by the defendant Nos.1 and 3 / petitioners herein in RCS No. 802 of 2016.

2. I have considered the strenuous submissions of the learned Advocate for the applicants. I have gone through the grounds (A) to (P) formulated in the memo of the application. Reliance is placed upon the judgments of this Court in the matters of Major General Shanta Shamsher Jung Bahadur Rana Vs. Kamani Brothers Private Ltd. and others [AIR 1959 Bom.201] and Beach Towers Condominium and others Vs. Bombay Dyeing and Manufacturing Company Limited and others [2017 (3)]

Bom.C.R.219].

3. These petitioners have filed application Exhibit 75, by which, it is prayed that RCS No.802 of 2015 should not be entertained and the plaint should be rejected under Order VII Rule 11(d) of the Code of Civil Procedure. Contention is that the plaintiffs are seeking a declaration that the adoption deeds in favour of these petitioners are illegal and not binding upon the plaintiffs. It is pointed out that an earlier RCS No. 122 of 1998 was decreed by judgment dated 27.12.2000. The plaintiff No.2 and her son had filed an application bearing No. 48 of 2005 for seeking correction in the decree, with reference to a wrong description of the suit land. Execution proceedings were pending before the Court at the taluka AUSA.

4. It is strenuously submitted that the plaintiffs have admitted in paragraph No.6 of the plaint that these petitioners had created two different adoption deeds. It is, therefore, stated that when the plaintiffs admit the knowledge of the adoption deeds, any challenge to the adoption deeds beyond three years would be barred by limitation prescribed under Article 57 of the Limitation Act, 1963.

5. I find that the trial Court has extensively dealt with the submissions of these petitioners. It is also recorded that a compromise decree was passed in RCS No.558 of 2013 and 666 of 2013. The defendants in those proceedings, who are the plaintiffs in the proceedings in hand, got the knowledge about the adoption deeds after M.A. No.142 of 2013 was filed. The present suit was instituted in September, 2016.

6. Considering the various factors as above, the trial Court concluded in view of the law laid down by the Honourable Apex Court in the matter of Ramesh B. Desai and others Vs. Bipin Wadilal Mehta and others [(2006) 5 SCC 638], that a plea of limitation cannot be decided as an abstract principle of law *de hors* the facts. It concluded that the litigating sides can be permitted to lead evidence and based on the evidence that would be recorded in the matter, the trial Court would be better equipped to decide the suit.

7. I find from Article 57 under Part III of the Limitation Act that the period of limitation begins from the date of the knowledge of the alleged adoption. The plaintiffs have stated that they gathered the knowledge of the adoption in M.A. No. 142 of 2013.

8. Considering the above, I find that the trial Court has adopted a pragmatic approach in the light of the law laid down by the Honourable Apex Court. The impugned order, therefore, cannot be termed as being perverse or erroneous. This petition, being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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