

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 102 OF 2018

VAISHALI ATUL MUNDADA AND OTHERS
VERSUS
RAMDAS NAMDEO MAHAJAN AND OTHERS

Advocate for Applicant : Mr. G.S. Rane.

CORAM : RAVINDRA V.GHUGE, J.
DATED : 06th August, 2018.

PER COURT :

1. Learned counsel for the petitioner submits that the development deed dated 02/06/2006, inadvertently remained to be filed with the petition paper book, though it has been referred to. It is sought to be added as Exhibit F from page 51. Leave to add documents is granted.
2. I have heard the learned advocate for the petitioners. The petitioners seek to challenge the order dated 08/02/2018, by which, the Trial Court has rejected Application Exhibit 14 and 50.
3. The petitioners had put forth two applications in Special Civil Suit No. 55/2011. Exhibit 14 was with regard to whether the suit is valued properly. Exhibit 50 is with regard to whether the suit is within limitation.
4. Learned counsel for the petitioners draws my attention to the pleadings in paragraph Nos. 3, 7, 10 and 12 of the plaint contending

that as the development agreement is signed by the petitioners on 02/06/2006, the limitation starts immediately from the said date and under Article 59 of the Limitation Act, the said instrument can be set aside or cancelled if a suit is instituted within three years.

5. Pursuant to his strenuous submissions, I have gone through the pleadings and the impugned order. The plaintiffs have approached the Trial Court after they realized that they were defrauded by these petitioners. There was an exchange of notices and considering the notice dated 12/01/2011, that the plaintiffs moved the Civil Court by lodging the suit.

6. The contention of the petitioners cannot be appreciated since they intend to put forth a theory that once the development deed was signed on 02/06/2006, any grievance about the said deed will have to be raised within three years. The fallacy in the said argument is that Article 59 clearly mentions that the time from which the limitation period would begin is when the facts entitling, the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him. As such, if the plaintiffs contending on the basis of the fact that the cause of action has arisen on 12/01/2011, the suit would become triable. The Trial Court has arrived at this conclusion and as such, I do not find that the said conclusions could be termed as being perverse or erroneous.

6. On the issue of the suit being improperly valued, the petitioners contention is that because the valuation of the property was mentioned in the deed of development as Rs. 1,22,40,000/- the suit will have to be valued either under Section 6 (ha) or under Section 6 (d). The record reveals that the plaintiffs desire that the deed of development be declared as being void. Neither a declaration for ownership, etc. of an immovable property has been sought, so as to cover the case under Section 6 (d) nor a declaration that any sale or contract for sale or termination of contract for sale of any immovable or movable property is void, so as to bring the case under Section 6 (ha).

7. In the entire development deed, no consideration has been mentioned and the deed does not deal with any sale or contract of sale of any immovable property.

8. In view of the above, I do not find that the conclusion of the Trial Court that the said suit would be not covered under Section 6 (ha) or 6 (d), could be termed as being perverse or erroneous.

9. In view of the above this Civil Revision Application being devoid of merit, is therefore, dismissed.

(RAVINDRA V.GHUGE, J.)