

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO.108 OF 2018

KALYANRAO WALIBA SHINDE

VERSUS

SAMBHU MOTIRAM ALLURE AND ANOTHER

...

Advocate for the Petitioner : Shri Patil Jayant R..

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th July, 2018

Per Court:

1 The Petitioner/ original Defendant No.1 is aggrieved by the order dated 25.04.2018 by which, the Trial Court has rejected the application Exhibit-75 filed by him praying for rejecting the plaint in RCS No.63/2015 under Order 7 Rule 11 of the Code of Civil Procedure.

2 The learned Advocate for the Petitioner has strenuously criticized the impugned order. He has drawn my attention to the 10 grounds formulated by him in the memo of the petition. He submits that a plain reading of the plaint would indicate that the cause of action cannot be pursued by the Plaintiff as it is clearly barred by the law of limitation. The suit has been filed for seeking a declaration of ownership and perpetual injunction against the Defendants.

3 In the light of the submissions of the learned Advocate for the Petitioner and upon perusing the petition paper book, I find that the Trial

Court has concluded that whether, the issue raised by the Defendant would render the suit untenable under Section 58 of the Limitation Act, would be a mixed question of facts and law. Reliance has been placed upon certain judgments cited and upon considering the law laid down by the different courts, the Trial Court has concluded that this issue cannot be considered superficially so as to reject the plaint under Order 7 Rule 11.

4 I find that though the suit was instituted in 2015, the application Exhibit 75 has been filed on 27.06.2017.

5 As such, I do not find that the impugned order could be termed as being perverse or erroneous merely because a different view can be taken.

6 At this stage, the learned Advocate for the Petitioner submits that the Petitioner may move an application for framing of an issue with regard to limitation.

7 This Court need not express any opinion on the said request as the Petitioner/ Defendant may decide the course that he desires to adopt.

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