

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 88 OF 2016

Shantaram Laxman Tavale
since deceased through legal heirs & Ors. Applicants

VERSUS

P.Venu Gopal Nair & Ors. Respondents

Mr.Ganesh Koli for the Applicants.

Mr.Siddheshwar B. Kalel, i/b. Pol Legal Juris for the Respondent no. 1.

CORAM : R.D. DHANUKA, J.

DATE : 3rd SEPTEMBER, 2018

P.C.

By this civil revision application filed under section 115 of the Code of Civil Procedure, 1908 the applicants (original defendants) have impugned the order passed by the learned trial judge rejecting the application filed by the applicants under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908. It was the case of the applicants that the agreement for sale was executed on 30th December,1997. Under the said agreement for sale, the transaction was to be completed within one year from the date of execution of the said agreement. The sale permission was granted by the authority immediately. However the respondents (original plaintiffs) have filed a suit on 20th October, 2015.

2. A perusal of the plaint filed by the respondents indicates that the respondents had given various reasons in the said suit for specific performance and also as to why the cause of action has not been arisen as

contemplated in the agreement for sale. The learned judge has considered those averments in the impugned order while rejecting the application filed by the applicants herein under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908.

3. Under Order 7 Rule 11(d), the plaint can be rejected where the suit appears from statement in the plaint to be barred by any law. In my view, a perusal of the plaint which has been perused by the learned trial judge, there was no case made out by the defendants that the plaint was to be rejected as barred on the ground of limitation issue. Issue of limitation is a mixed question of fact and law and thus the learned trial judge has rightly rejected the application filed by the applicant under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908.

4. Civil revision application is devoid of merits and is accordingly dismissed. No order as to costs.

[R.D. DHANUKA, J.]

Kanchan
Vinod
Mayekar

Digitally signed
by Kanchan
Vinod Mayekar
Date:
2018.09.04
17:56:47 +0530