

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.371 OF 2016

Prakash Hamirmal Jain	 Applicant
V/s.	
Pushpalata Ramakant Patil & Ors.	 Respondents

Mr. Sandesh Patil, a/w. Mr. Chintan Yogesh Shah and Mr. Harish Jain,
for the Applicant.

Mr. Prasad Laxman Gajbhiye for Respondent No.1.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 4TH APRIL, 2018.

P.C. :

1. Heard Mr. Patil, learned counsel for the Applicant, and
Mr. Gajbhiye, learned counsel for Respondent No.1.

2. By this Revision Application, filed under Section 115 of the Code of
Civil Procedure, 1908, the Applicant is challenging the order dated 30th
April 2016 passed by the 6th Joint Civil Judge, Senior Division, Thane, in
Special Civil Suit No.27 of 2013, thereby answering the finding to the
preliminary issue relating to the limitation in affirmative, thereby
holding that the Suit is within limitation.

3. The submission of learned counsel for the Applicant, who is
Original Defendant before the Trial Court, is that the Plaintiff-
Respondent No.1 has filed the Suit for following reliefs :-

- “(a) This Hon’ble Court be pleased to hold and declare that the Plaintiff is the lawful owner of the suit property and having undivided right, title, interest in the suit property viz. all those pieces and parcels of lands bearing Old Survey No.204/4, New Survey No.8, Hissa No.4, admeasuring 0 H - 03 R - 5 P, assessed at Rs.0.33/- and Old Survey No.205/5, New Survey No.7, Hissa No.5, admeasuring 0 H - 32 R - 4 P, assessed at Rs.1.81/-, lying, being and situated at the then Village Morva, (the then Village Rai-Murdhe) Talathi Saja Bhayander, Taluka and District Thane, and are entitled for the possession thereof;*
- (b) This Hon’ble Court be further pleased to hold and declare that the suit Agreement being “Agreement for Sale” dated 25.05.1982, entered into and executed by Defendant Nos.1 to 13 in favour of Defendant No.14 with respect to the suit property, is illegal, void ab initio and not binding upon the Plaintiff;*
- (c) This Hon’ble Court be further pleased to hold and declare that the suit Deed being “Deed of Conveyance” dated 15.04.2010 (registered with Sub-Registrar of Assurances at Thane at Doc. Serial No.TNN-7/3508/2010 on 15.04.2010) entered into and executed by Defendant No.14 with respect to the suit property, in favour of Defendant No.15 is illegal, void ab initio and not binding upon the Plaintiff;*
- (d) This Hon’ble Court be further pleased to hold and declare that Agreement dated 28.09.2011 entered into and executed by Defendant No.15 in favour of MBMC i.e. Defendant No.19 with respect to the portion out of the suit property, is illegal, void ab initio and not binding*

upon the Plaintiff, so also, all the acts, things, deeds etc. done and carried out by Defendant No.15 with respect to the suit property on the basis of the suit Deed are illegal, ultra vires, void ab initio and of no avail to Defendant No.15;

- (e) The Defendants, their agents, servants, employees, representatives and all the person/s claiming through or under them be restrained by an order of permanent injunction from dealing with or disposing off or carrying or continuing with any construction activities and/or creating any third party interests with respect to the suit property, in any manner whatsoever;*
- (f) Defendant No.19 – MBMC Corporation, their Officers and Representatives, be restrained by an order of permanent injunction from granting any permission, sanctions, authorizations etc. with respect to the suit property, in any manner whatsoever;*
- (g) Interim and ad-interim relief in terms of prayers (e) and (f) above be granted in favour of the Plaintiff;*
- (h) Costs of the Suit be provided for;*
- (i) Any other and further relief/s, as this Hon'ble Court may deem fit and proper, in the nature and circumstances of the case, may kindly be granted in favour of the Plaintiff.”*

4. It is urged that, as regards the reliefs claimed in prayer clauses (a) and (b), they are apparently barred by limitation; because, these reliefs are for declarations and as per Article 58 of the Limitation Act, 1963, the period of limitation prescribed for Suit for declaration is three years

from the date when the 'right to sue' first accrues. Here in the case, it is urged that, 'right to sue' to Respondent No.1-Plaintiff first accrued way back in the year 1963 itself. It is urged that, Thakabai, who is the mother of Respondent No.1 - the Original Plaintiff before the Trial Court, is the daughter of Pandurang Bhaskar Patil. Defendant Nos.1 to 13 are the legal heirs of deceased Balkrishna, who was the brother of deceased Pandurang Patil. Defendant Nos.1 to 13 have sold the suit property to Defendant No.14 by virtue of unregistered 'Sale-Deed' dated 25th May 1982. The Mutation Entry No.2558 was also made to that effect. Defendant No.15 has purchased the suit property from Defendant No.14 by the registered 'Sale-Deed' dated 15th April 2010. Thereafter, some portion of the suit property was also surrendered to Respondent No.19 - Mira-Bhayandar Municipal Corporation for the purpose of road-widening.

5. It is urged that, all along, when these transactions took place, the relevant mutation entries were made in the 'Revenue Record' and most importantly, in the year 1963 itself, Thakabai has given her statement before the 'Mamlatdar' stating that it is the Balkrishna, who is in possession of the suit land as 'tenant' and also as 'owner' thereof. It is urged that, in view of this statement, the necessary order was also passed by the Additional Tahasildar on 31st May 1963. Therefore, the first cause of action occur in the year 1963; thereafter, it arose in the

year 1982, when Defendant Nos.1 to 13 sold the suit land to Defendant No.14 and Mutation Entry No.2558 was made to that effect; then it arose on 15th April 2010, when Defendant No.14 executed the registered 'Sale-Deed' in respect of the suit land in favour of Defendant No.15; and, lastly, it also arose on 28th September 2011, when some portion of the suit land was surrendered to Defendant No.19-Mira-Bhayander Municipal Corporation on 10th October 2011 and an 'Agreement' to that effect was executed and Mutation Entry No.252 was made on 10th October 2011. It is urged that, even accepting that the 'Sale-Deed' dated 25th May 1982 executed by Defendant Nos.1 to 13 in favour of Defendant No.14 was unregistered, even then, prior to execution of the said 'Sale-Deed', the 'Public Notice' was issued and Respondent No.1-Plaintiff has given reply to the said notice; the rejoinder thereto was also sent, thereby clearly indicating that Respondent No.1-Plaintiff had knowledge about the said transaction.

6. According to learned counsel for the Applicant, therefore, all along, Respondent No.1 being aware of all these transactions, the relief of declaration, which she is now claiming, to be the lawful owner of the suit property and having undivided right, title and interests therein, is clearly barred by limitation. Even her relief for possession of the suit land also cannot be entertained, considering the provisions of Article 65 of the Limitation Act, which provide that, when the Suit is based on title,

then, such Suit has to be filed within three years from the date when the possession of the Defendant becomes adverse to the Plaintiff.

7. As regards the second relief, it is submitted that, the 'Agreement for Sale' dated 25th May 1982 being executed long back, any relief of declaration to that effect is barred, in view of Article 58 of the Limitation Act and as regards the relief of declaration relating to 'Deed of Conveyance' also, it is submitted that, having regard to the above-said facts, it being a registered document and the mutation entry to that effect also being made, the Suit filed in January, 2013, cannot be entertained at all, it being filed beyond the period of three years from the date when the cause of action accrued.

8. It is the submission of learned counsel for the Applicant that, on the preliminary issue of limitation, the Trial Court has also recorded the evidence of Respondent No.1-Pushpalata R. Patil, who has categorically admitted in her cross-examination that she was aware that the suit property was recorded in the name of Balkrishna Bhaskar Patil in the year 1956 and its Mutation Entry number was 1372. Further she has also admitted that, when she was 20 years old, she came to know that the suit property was recorded in the name of Balkrishna Bhaskar Patil. It is urged that, this admission indicates that, in the year 1978 itself, she was made aware about the suit property standing in the name of

Balkrishna Patil. Despite that, from the date of knowledge, the Suit is not filed within a period of three years. She has also admitted that, at present, Defendant No.15-Prakash Jain has constructed a building on the suit property, which is consisting of nine floors and even the 'Occupation Certificate' is granted. Thus, it is submitted that, at such a belated stage, when the Suit is filed, it was not proper on the part of the Trial Court to give some cursory finding to the issue of limitation and hold that the Suit is not barred by limitation.

9. Per contra, learned counsel for Respondent No.1-Plaintiff has supported the impugned order passed by the Trial Court and in my considered opinion, rightly so. The provisions of Article 58 of the Limitation Act provides that, the period of limitation for obtaining any other declaration is three years, from the date when the 'right to sue' first accrues. The 'right to sue' will accrue when the 'Sale-Deed' or any registered document of alienation of the suit property is executed. Here in the case, the first registered document of the 'Sale-Deed' is executed on 15th April 2010. The earlier document was, admittedly, the unregistered 'Conveyance' and she was not party thereto. The Suit is filed on 7th January 2013. Hence, it is within three years therefrom.

10. As regards the mutation entries, the law is well settled that, they cannot be a document of title, but they are only made for fiscal purposes.

Even assuming that Respondent No.1-Plaintiff had knowledge about those mutation entries or of the public notice, which was issued prior to execution of the 'Sale-Deed', however, that knowledge cannot give rise to 'right to sue'. The 'right to sue' accrues only when the registered 'Sale-Deed' is executed and thereby there is frustration or denial of 'Rights' and since then the Suit being filed within a period of three years, no fault can be found in the impugned order of the Trial Court, if the Trial Court has held that the Suit is within limitation. In the revisional jurisdiction, therefore, no interference is warranted in the impugned order passed by the Trial Court.

11. The Revision Application, therefore, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]