

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****CIVIL REVISION APPLICATION NO. 896 OF 2014****M/s.Nisarg Nirman Developers****..... Applicants****VERSUS****Sanjay Vasant Sase & Ors.****..... Respondents**

Mr.Sanjay Udeshi, a/w. Mr.Akshay Udeshi, i/b. M/s.Sanjay Udeshi & Co. for the Applicants.

Mr.Mahendra Jhakde for the Respondent nos. 1 to 21.

Ms.Gadre, i/b. Little & Co. for the Respondent no.22.

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 petitioners (original defendant no.2) have impugned the order passed by the learned trial judge rejecting the application filed by the defendant no.2 under Order 7 Rule 11(b) (c) (d) of the Code of Civil Procedure, 1908 *inter alia* praying for rejection of plaint on various grounds.

2. I have heard learned counsel for the applicants and I have perused the records including the plaint and the findings rendered by the learned trial judge.

3. Insofar as the case of the applicants that the suit property was not properly valued, the learned trial judge has rejected the said submission on the ground that the plaintiff had applied for declaration and injunction and has neither prayed for a declaration of ownership nor for possession.

The learned trial judge has after considering the averments made in the plaint has held that the suit was rightly valued under section 6(iv)(j) of the Maharashtra Court Fees Act in view of the fact that there was neither any prayer for declaration of the ownership nor for possession of the suit property. I am not inclined to interfere with the impugned order on the ground that the suit property was not valued property.

4. Insofar as submission of the learned counsel for the petitioner that the application for suit was barred by law of limitation and the suit was liable to be dismissed is concerned, the learned trial judge has held that the averments in the plaint were that the applicant (original defendant) had caused obstruction to the peaceful possession of the original plaintiff on 20th April 2013, 29th April 2013 and on 20th May 2013 and thus the suit was not barred by law of limitation.

5. The issue of limitation being a mixed question of fact and law, the issue can be decided at the stage of trial after the evidence is recorded.

6. The learned trial judge has rightly recorded the *prima facie* finding there there was a cause of action in filing a suit in view of the apprehension of the plaintiffs that the defendant may obstruct the possession of the plaintiffs.

7. Insofar as reliance placed on the judgment of Supreme Court in case of **Anathula Sudhakar vs. P.Buchi Reddy (Dead) by LRs. And others, (2008) 4 SCC 594** by the learned counsel for the applicant is concerned, the Supreme Court was dealing with a decree passed by the trial court after recording full-fledged evidence. The said judgment does

not apply to the facts of this case. The reliance placed on the said judgment is totally dismissed.

8. On perusal of the findings recorded by the learned trial court which are recorded after considering the averments made in the plaint, I do not find any infirmity in the findings recorded by the learned trial judge.

9. Learned counsel for the respondent no.22 submits that the possession was handed over to the applicant and not to the original plaintiff is concerned, the said issue would be decided by the learned trial court after recording the evidence of both the parties and thus no findings can be rendered by this court on the said averments made in the affidavit in reply at this stage.

10. Civil revision application is devoid of merit and is accordingly dismissed.

11. All the contentions on merits on rival issues raised by the parties are kept open and can be agitated at the time of trial.

[R.D. DHANUKA, J.]