

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION (ST.) NO. 26718 OF 2017

Viraj Pratap Jagdale	...	Applicant
V/s.		
Arun Baban Pansare & Ors.	...	Respondents

- Mr.Sachin R. Pawar for the Applicant.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 29th JANUARY, 2018.

P.C. :

1] Heard learned counsel for the Applicant.

2] By this Civil Revision Application, the Applicant is challenging the order dated 17th March 2017 passed by the Civil Judge Senior Division, Baramati, below Exhibit-47, in Special Civil Suit No.67 of 2016.

3] The application at Exhibit-47 was filed by the Applicant under Order-7 Rule-11(b)(d) of the Code of Civil Procedure for rejection of the plaint on count that the plain reading of the plaint does not disclose any cause of action, the required Court fees is not paid and suit is also barred by the limitation.

4] The Respondent No.1/Plaintiff resisted the said application contending that there is sufficient averment in the plaint as to cause of action to file the suit; it is within limitation and proper Court fees stamp is also paid.

5] After hearing learned counsel for both the parties, the trial Court was, pleased to reject the Applicant's application finding that the averments in the plaint do not substantiate the contentions raised by the Applicant.

6] While challenging the impugned order passed by the trial Court, the submission of learned counsel for the Applicant is that, the plain averments in the plaint do not disclose the cause of action, as regards the present Applicant, who is a subsequent purchaser and who is a person who carried out construction on the basis of the plan. The Respondent No.1/Plaintiff is restraining the Applicant from carrying out the construction, even without challenging the earlier sale-deed and therefore, as the suit is filed clearly with an intention to harass the Applicant as subsequent to the sale-deed, even the confirmation deed is also executed, the trial Court has committed an error in rejecting the impugned application. It is submitted that oral partition was executed between the parties and the owners are

enjoying their separate possession since long back and thus, it is submitted that, the trial Court should have rejected the plaint.

7] As per the well settled and well crystallized legal position, at the time of deciding the application for rejection of the plaint on the ground that, it is barred by limitation or it does not disclose the cause of action, the averments made in the plaint are required to be considered, without having regard to the defence raised by the Defendants. In the present suit, if the averments in the plaint are considered, it can be seen that the Respondent No.1/Plaintiff has described in detail as to how the cause of action arose against the present Applicant also.

8] It may be stated that, the suit is filed by the Respondent No.1/Plaintiff for partition and separate possession of his share in the suit properties against Defendant Nos.6 to 9 and 19 to 24. In paragraph No.3 of the plaint, he has stated that, though the suit property is yet not partitioned, his cousin brother Bhagwan Sahebrao Pansare has, on 24th March 2004 sold his undivided share of 11 Gunthas to Defendant Nos.14 to 17. Thereafter the legal heirs of his cousin brother Bhagwan Sahebrao Pansare, who are Defendant Nos.6 to 9 in the suit, have sold their undivided share of 20 Gunthas in

favour of one Atul Gare by Registered Sale Deed dated 30th January 2008. Then, this Atul Gare has sold the area of 20 Gunthas to Defendant No.10 Keshav Nagare by Registered Sale Deed dated 22nd November 2010. Not only that, Defendant Nos.6 to 9 have also sold their undivided share to the extent of 40 Gunthas of land to the present Applicant by registered sale-deed dated 2nd May 2013. When the Applicant came to know about it, he had immediately made a complaint application to the Talathi on 26th March 2013 for cancellation of the mutation entry. When his application was rejected, he has challenged the said order in the appeal. Thereafter, he came to know that Defendant Nos.19 and 20 have executed confirmation deed on 27th September 2013 in favour of the Applicant. According to him, he also came to know that the Applicant has sold 11 Gunthas of land to Defendant Nos.1 to 4 by registered sale-deed dated 26th September 2014. In this situation, Defendant Nos.1 and 2 are creating obstruction to the possession of the Applicant, hence it has become necessary for him to file the suit for partition and separate possession of his share in the suit property and also for declaration that the alleged sale-deed executed initially by Defendant Nos.14 to 17 and thereafter, by Defendant No.5, the present Applicant, in favour of Defendant Nos.1 and 2 be declared null and void.

9] Thus, the perusal of the plain averments in the plaint is more than sufficient to disclose the cause of action against present Applicant also. Whatever the defence Applicant has, cannot be also considered at this stage for rejection of the plaint.

10] As regards the ground of limitation, the trial Court has rightly held that it being a mixed question of fact and law, at this stage, when *prima-facie* the averments in the plaint show that the suit is within limitation, the plaint cannot be rejected.

11] It is not explained how the valuation of the suit claim is not proper, hence the trial Court has not thought it fit to reject the application filed by the Applicant on this ground also.
plaint on that ground also.

12] Perusal of the impugned order passed by the trial Court therefore, clearly goes to show that, after considering all the aspects and the averments on the plaint, the trial Court has rightly rejected the application.

13] Hence, Civil Revision Application being without merits, stands dismissed.