

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

CIVIL REVISION APPLICATION NO.143 OF 2014

Shri Mohammad Hanif Sajjanmiya Shaikh & anr. ... Applicants

Vs.

Shri Mabrur Sajjanmiya Shaikh & Ors. ... Respondents

Mr.U.B. Nighot for the Applicants

Mr.A.A. Siddiquie i/b A.A. Siddiquie & Associates, for Respondent
Nos.1 and 2

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JUNE 4, 2018**

P.C. :

1. This Civil Revision Application is filed against the order dated 27.3.2012 passed by the learned Civil Judge Junior Division, Junnar, thereby rejecting the application filed by the applicants i.e., the original defendant Nos.1 and 2, which was filed under Order 7 Rule 11(d) of the Civil Procedure Code.

2. It is the contention of the learned Counsel for the applicants that petitioner No.1 is the brother of respondent Nos.1 and 2, who are the original plaintiffs. Respondent Nos.1 and 2 have filed Suit No.164 of 2011 for cancellation of sale deed dated 15.7.1983, which was executed in favour of petitioner No.2 i.e., defendant

No.2, who is the wife of petitioner i.e., defendant No.1. The learned Counsel for the petitioners has submitted that the application was moved mainly on the ground of limitation as the respondents have challenged the sale deed of 15.7.1983 by filing the Suit on 11.8.2011. He has submitted that respondent Nos.1 and 2, i.e., the original plaintiffs, were fully aware of the transaction of the impugned land which had taken place in the year 1983. The learned Counsel has pointed out that the father has executed the sale deed of the suit land in favour of the wife of petitioner No.1 in 1983. The learned Counsel relied on the order dated 1.4.2011 passed by the DILR, Solapur in appeal, being Appeal (SR) No.560 of 2010. He has submitted that the respondents were parties in this appeal and they had knowledge of this impugned transaction. He also submitted that after the death of their father, all other lands were initially transferred in the name of the plaintiffs and their mother and, therefore, it is obvious that the plaintiffs had knowledge that their father has sold the suit land to defendant No.2, i.e., petitioner No.2 and the wife of petitioner No.1.

3. He submitted that these facts were not taken into account by the learned trial Judge and, therefore, the application under Order

7 Rule 11(d) of the Civil Procedure Code was erroneously dismissed.

4. Learned Counsel for respondent Nos.1 and 2 has opposed the application.

5. Heard submissions. Perused the order passed by the DILR. In the entire order, there is no mention of the sale deed dated 15.7.1983. Moreover, when the issue of limitation is raised by the defendant, it is necessary to see the pleadings and on the basis of the pleadings, whether the suit is within the limitation or not, can be tested firstly and thereafter, on the basis of the documents, if produced by the defendants, can be considered to decide the point of limitation. In the plaint, the plaintiffs have mentioned that they had no knowledge, as the sale deed was executed surreptitiously, without their knowledge. There may be a number of lands and they may be transferred without the knowledge of the petitioner by the plaintiffs in their names, however, that issue is different. Therefore, no illegality is found in the order passed by the trial Judge.

6. Civil Revision Application is, therefore, dismissed. The trial Court to proceed immediately. The trial Court to frame the issue of limitation while settling the issues under Order 14 and accordingly, the parties can lead evidence. The parties to cooperate with the trial Court.

(MRIDULA BHATKAR, J.)