

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.694 OF 2016

Lavasa Corporation Ltd., Pune	 Applicant
V/s.	
Ramchandra Dhau Bhavdhane & Ors.	 Respondents

Mr. Sandesh Shukla, a/w. Mr. Amit Singh, i/by M/s. Abhay Nevagi & Associates, for the Applicant.

None for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 30TH JANUARY 2018.

P.C. :

1. Heard Mr. Shukla, learned counsel for the Applicant.

2. By this Revision Application, filed under Section 115 of the Civil Procedure Code, 1908, the Applicant is challenging the order dated 30th July 2016 passed by the Joint Civil Judge, Senior Division, Pune, below “Exhibit-1” in Special Civil Suit No.1829 of 2010, holding that, the Suit filed by the Respondents is within the period of limitation and thereby answering in affirmative the preliminary issue raised for its consideration under Section 9A of the CPC, in view of the application filed by the Applicant at “Exhibit-24” and the order passed below it.

3. The submission of learned counsel for the Applicant is that, as regards the Applicant, the Suit is apparently barred by limitation, because, by the present Suit, the Respondents-Plaintiffs are challenging the Sale- Deed executed on 8th October 1997 in favour of the predecessor of the Applicant and the Sale-Deed dated 27th September 2001 executed by the predecessor of the Applicant in his favour. It is urged that, as the Suit is filed in the year 2010, both these reliefs of declaration were apparently barred by limitation and hence, the Trial Court has committed an error in holding that the Suit is within the period of limitation.

4. According to learned counsel for the Applicant, so far as the prayer of partition and separate possession made in the Suit is concerned, the said prayer is not against the Applicant. The only prayer against the Applicant is for declaration in respect of the Sale-Deeds. Though the Respondents-Plaintiffs were given an opportunity to lead evidence on the preliminary issue of limitation, the Respondents-Plaintiffs did not lead such evidence in support of their contention that, they got knowledge about the said Sale-Deeds only in the year 2009. Hence, according to learned counsel for the Applicant, even the argument advanced normally that the issue of limitation is a mixed question of law and facts and hence cannot be decided at this stage, also cannot be accepted in this case, as the Respondents have failed to prove the factual

aspect, despite opportunity given to them to lead evidence, that they got the knowledge about these Sale-Deeds only in the year 2009. Thus, the sum and substance of the submission advanced by learned counsel for the Applicant is that, qua the Applicant, the Suit was apparently barred by limitation and hence, the Trial Court has committed an error in holding the Suit as within limitation.

5. However, perusal of the impugned order passed by the Trial Court clearly goes to reveal that, the Suit is, admittedly, for partition of the joint family property and as per the settled position of law, there is no period of limitation provided to the Suit for partition and possession, unless the theory of ouster is pleaded. If Respondents say that they were ousted from possession of the joint family property, then, Article 110 of the Limitation Act would apply and then the Suit has to be filed within a period of twelve years from the date of knowledge of its exclusion. Here in the case, admittedly, Respondents have not pleaded the case of exclusion and, therefore, their Suit being simplicitor for partition and separate possession of their share, it cannot be said that it is barred by limitation.

6. So far as the relief of declaration, sought in respect of the Sale-Deeds and which relief is claimed qua the Applicant, the Trial Court has, in paragraph No.16 of its order, also rightly considered that, in a Suit for

partition, it is not necessary to claim such relief of declaration that the Sale-Deeds executed by the co-owners are not binding on the share of the Plaintiffs. The Court can decide those rights in respect of the Sale-Deeds while deciding the substantive relief of partition. Hence, even assuming that such a declaratory relief is barred by law, it will not affect the maintainability of the Suit, so as to say that the Suit is barred by limitation, qua the Applicant.

7. Perusal of the impugned order passed by the Trial Court, therefore, does not indicate any illegality and impropriety. Therefore, in the revisional jurisdiction, no interference is warranted in the impugned order. The Revision Application, therefore, being without merit, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]