

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.94 OF 2019

Puja d/o Baburao Apar & anr. ... APPLICANTS

VERSUS

Bhagwan s/o Ganpat Apar ... RESPONDENT

.....
Shri S.B. Solunke, Advocate for applicants
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CORAM: R.G. AVACHAT, J.

DATED : 28th AUGUST, 2019.

ORDER :

The challenge in this revision application is to the order dated 2/2/2019, passed by Civil Judge, Junior Division, Bhokardan, on application Exh.25, moved in Regular Civil Suit No.64/2016. The applicants herein are original defendants. The respondent has filed the suit for declaration and possession. The relief of declaration is to the effect that it be declared that the deed of partition dated 2/12/2009 has been got executed by practicing fraud and coercion.

2. Heard Mr. Solanke, learned counsel for the applicants.
The applicants herein moved application under Order VII Rule 11

of the Code of Civil Procedure for rejection of the plaint. The main contention of the applicants herein is that the suit was barred by limitation. The suit for declaration ought to have been filed within three years from the date of execution of the deed of partition. Since the suit has been filed seven years thereafter, it is barred by limitation.

3. The trial Court has given cogent reasons for rejection of the application. It is observed that, the suit is for possession of immovable property, based on title. It would, therefore, be governed by Article 65 of the Limitation Act. Moreover, whether the plaint is liable to be rejected on the ground of limitation, is a mixed question of facts and law. The parties are required to lead evidence in that regard. Perusal of the averments in the plaint as it is, would not demonstrate the same being liable for rejection in terms of provisions of Order VII Rule 11 of the Code of Civil Procedure.

4. Learned counsel for the applicants herein although made submissions consistent with the averments in the application moved for rejection of the plaint, no case is made out for interference with the impugned order. Since the reasons given by the trial Court are sound and this Court endorse the same, the application deserves to be rejected at the threshold.

((3))

5. In view of the above, the Civil Revision Application stands rejected.

(R.G. AVACHAT)
JUDGE

fmp/-