

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

22 CIVIL REVISION APPLICATION NO. 11 OF 2019

SMT. ANITA W/O CHANDRAHARSH PATIL
VERSUS
SMT. SUDHAMATI FULCHAND KONDEKAR AND ANOTHER

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Advocate for the Petitioner : Mr. Natu Sharad V.
Advocate for Respondent No. 2 : Mr. Vikas G. Kodale h/f
Mr. V. D. Gunale

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CORAM : V. K. JADHAV, J.
DATED : 02nd December, 2019

PER COURT:-

1. By consent, the matter is heard finally at admission stage.
2. It appears that the applicant/original defendant no.1 had filed application Exhibit 83 under Order VII Rule (11) of the Code of Civil Procedure in Regular Civil Suit No. 647 of 2012 for rejection of plaint on the ground that the suit is barred by limitation. Learned 5th Joint Civil Judge, Senior Division, Latur, by order dated 04.09.2018 passed below Exhibit 83 in Regular Civil Suit No. 647 of 2012, rejected the said application. Hence this Civil Revision Application.
3. Learned counsel for the applicant/original defendant no.1 submits that the mother of the plaintiff, in the capacity of the

guardian of the plaintiff, sold the immovable property under registered sale deed dated 16.10.1999. Learned counsel submits that the respondent/plaintiff has deposed before the court below on the date when he was 30 years of age. It appears that the respondent/plaintiff has not instituted the said suit within three years on attending majority and as such the suit is barred by limitation. Learned counsel submits that there is no question of any mixed question of fact and law and the suit is barred by limitation as per the pleadings of the respondent/plaintiff itself in the said suit. However, the trial court has not considered the same and incorrectly rejected the application Exhibit 83.

4. Learned counsel for the respondent/original plaintiff submits that the father of the respondent/plaintiff died in the year 2011 and even during his life time, though he was the natural guardian, the mother of respondent/plaintiff shown as his guardian. It is therefore necessary to look into the provisions of the Limitation Act, 1963 to find out as to which Article applies for seeking cancellation of the said sale deed. Learned counsel submits that the trial court has therefore rightly considered it as a mixed question of law and fact and rejected the application Exhibit 83 when the

respondent/plaintiff has completed is evidence and the matter is posted for the evidence of the applicant/defendant no.1.

5. On perusal of the plaint and the impugned order dated 04.09.2018 passed below Exhibit 83, it appears that in terms of the pleadings of the respondent/plaintiff, the trial court has considered it as a mixed question of law and fact so far as the point of limitation as raised in the application under Order VII Rule (11) of Civil Procedure Code filed by the applicant/defendant is concerned. It has also been pleaded specifically that in fact, the suit property was purchased from the income of the father for which the mother came to be shown as guardian of the ward (respondent/plaintiff). In view of the same, I do not find any fault in the impugned order passed by the trial court. It is a mixed question of law and fact and at the conclusion of the trial, it is for the trial court to record findings on its own merits as to whether the suit is barred by limitation. Hence, I proceed to pass the following order:

ORDER

The Civil Revision Application is hereby dismissed.

(V. K. JADHAV, J.)