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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.429 OF 2017

Mahadeo Shankar Pujari & Ors.	..Applicants.
V/s.	
Pramod Govind Pujari & Ors.	..Respondents.

Mr.P.R.Arjundwadkar for the applicant.

None for the respondents.

CORAM : M.S.SONAK, J.

DATE : MARCH 22, 2019

P.C.:-

Not on board. Upon mentioning, the matter is taken on production board.

2. Heard Mr.P.R.Arjunwadkar, learned counsel for the petitioners.

3. Challenge is to the order dated January 3, 2017 by which learned trial Judge has rejected the petitioner's application at Exhibit-47 in R.C.S. No.44/2016 under Order 7 Rule 11(d) of the Code of Civil Procedure ('the CPC; for short) for rejection of plaint.

4. Mr.Arjunwadkar submits that in the present case, respondent-plaintiff has challenged certain orders under the Mamlatdar's Courts ('the Act' for short). He submits that the limitation

period for sustaining the said order is one year. However, the suit was instituted beyond the period of one year and, therefore, the suit was barred by law of limitation. Mr.Arjunwadkar further submits that some of the parties have challenged the order under the said Act in this Court by instituting writ petition. He submits that this means that there are two parallel proceedings in relation to the same relief. On this ground also, he submits that the Civil Court should have exercised powers by rejecting the plaint.

5. Upon due consideration of the aforesaid contentions and perusal of the material on record, it is not possible to accept either of the contentions.

6. In the first place, the proceedings under the Mamlatdar's Court Act are summary in nature and, therefore, there can be no bar to the parties instituting substantive civil suit to establish their rights. Therefore, on the ground that some of the parties and not the plaintiff, have questioned the orders under the Act by instituting a writ petition cannot be a ground to reject the plaint.

7. So far as the issue of limitation is concerned, on the basis of material on record, it cannot be said that the suit is expressly barred by law of limitation. For invoking the provisions of Order 7 Rule 11(d) of the CPC, it is necessary for the defendant to make out a case that a suit is barred on the basis of a statement in the plaint. At this stage, it is not

permissible to go into the defence that can be raised in the written statement. In any case, since the substantive relief can be prayed, it cannot be said that this suit is expressly barred by law of limitation on the basis of a statement in the plaint. The issue of limitation can be framed as one of the issue and the same can be decided along with all other rights which arise in the suit, therefore, reserving the liberty to adopt such a course, this revision application is dismissed.

8. There shall be no orders as to costs.

9. It is clarified that the observations in the impugned order or for that matter, in the present matter are only on the context for deciding as to whether any case is made out for rejection of plaint. Therefore, these observations need not influence in any way the trial Judge while deciding the suit on its own merits.

(M.S.SONAK, J.)