

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
**CIVIL REVISION APPLICATION NO. 187 OF 2018**

|                                    |                |
|------------------------------------|----------------|
| Shri Popat Sakharam Nikam and ors. | .. Applicants  |
| Vs.                                |                |
| Shri Bhagwan Hari Nikam and ors.   | .. Respondents |

Mr.Girish R.Agrawal, for the Applicant.  
Mr.Anilkumar K.Patil, for the Respondents No. 1 to 4.

**CORAM : M.S.KARNIK, J.**

**DATE : 25<sup>th</sup> SEPTEMBER 2019**

**P.C. :**

.                    Heard learned Counsel for the applicants.

2.                    This Civil Revision Application challenges the order dated 05/12/2017 passed by the trial Court rejecting the application made by the petitioners – defendants under Order VII Rule 11 (d) of CPC. The plaintiffs had filed the Suit for declaration, injunction and possession. The plaintiffs prayed for declaration that the sale deed dated 31/10/2015 executed by

defendants No. 1 to 2 in favour of defendants No. 3 to 4 be declared as void and not binding on the plaintiffs. It is the case of the plaintiffs that suit property was re-granted to them in the year 1964 under the provisions of the Maharashtra Land Revenue Code (for short 'Code').

3. The defendants by filing the application under Order VII Rule 11 of C.P.C. contended that in respect of re-grant made in the year 1964, the Suit filed by plaintiffs in the year 2016 claiming ownership rights over the suit property is ex-facie barred by Law of Limitation. It is their further contention that even in view of the provisions of the Maharashtra Prevention of Fragmentation & Consolidation of Holdings Act (for short 'Act') as per the bar contained under Section 36A of the Act, the Suit is not maintainable.

4. The trial Court was of the opinion that as sale deed that is under challenge is of the year 2015, the Suit is within limitation. It further came to the conclusion that the Suit is not

barred by the provisions of the Act. Learned Counsel for the petitioners would submit that re-grant in favour of the plaintiffs is of the year 1964. According to him, since 1964 though plaintiffs claim to have subsisting right, title and interest in the suit land by virtue of re-grant order of 1964 made by State under the provisions of the Code, they did not take any steps to claim ownership rights. It is only after 50 years that the present Suit is filed in the Civil Court and therefore the Suit is ex-facie barred by Law of Limitation. To support his submission, learned Counsel for the petitioner relied upon the decision of the Apex Court in the case of **Eureka Builders and ors. Vs. Gulabchand s/o Veljee Dand since deceased by legal representatives and ors. Reported in (2018) 8 Supreme Court Cases 67**. The decision relied upon by learned Counsel for the petitioners in **Eureka Builders** (*supra*) is dated 03/05/2018. The impugned order is passed by the trial Court on 05/02/2017.

5. In this view of the matter, the trial Court did not have the advantage of considering the decision of the Apex

Court in **Eureka Builders** (*supra*) . Though it is the submission of the learned Counsel for the respondents – original plaintiffs that the decision in **Eureka Builders** (*supra*) is not applicable in the facts of the present case, according to me on a reading of the decision of the Apex Court, it would be in the fitness of things if the trial Court decides the application under Order VII Rule 11 upon considering the law laid down by the Apex Court in **Eureka Builders** (*supra*). The order passed by the trial Court therefore needs to be set aside only for the reason that the trial Court did not have the advantage of the decision of **Eureka Builders** (*supra*) while deciding the matter. The trial Court to decide the application made under Order VII Rule 11 of C.P.C afresh on its own merits without being influenced by any of the observations made by me. The trial Court would obviously consider the submission of the learned Counsel for plaintiff that said decision of the Apex Court has no application to the facts of the present case if canvassed. The impugned order is set aside. The trial Court to rehear the application made under Order I Rule 11 of C.P.C on its own merits and in accordance with law.

6. The Civil Revision Application is allowed in the above terms.

(M.S.KARNIK, J.)

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