

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.183 OF 2019

Mansoor Ahmad Abdul Latif Patel & Ors. ...Applicants
vs.
Abdul Rehman Abdul Latif Patel and Ors. ...Respondents

Mr. Sachin Punde, for the Applicants
Mr. Prashant Patil, for Respondent Nos. 1,2 and 4 to 6
Mr. Rajesh Parab, for Respondent No. 3.

CORAM : M. S. SONAK, J.

DATE : APRIL 18, 2019

P.C.:

. Heard Mr. Punde, learned counsel for the Applicants and Mr. Patil, learned counsel for the Respondent Nos. 1, 2 and 4 to 6 and Mr. Parab, for Respondent No. 3.

2. The challenge in this Revision Application is to the order dated 29th January, 2019 by which the learned trial Judge has dismissed the Applicants' application seeking rejection of the Plaint under Order 7 Rule 11 of Code of Civil Procedure.

3. Mr. Punde, learned counsel for the Applicants submit that there is no cause of action disclosed in the Plaint and further the suit is barred by the law of limitation. He pointed out that the Plaintiff in earlier suit had filed written statement in which they had admitted only regards the mutation entries. He submits that if

this is taken into consideration, then it is apparent that the suit is barred by the limitation. He submits that the suit is frivolous and ought not to even go for trial. For these reasons, he submits that the impugned order may be set aside and the Applicants application (Exhibit 21) be made absolute.

4. The learned counsel for the Respondents defend the impugned order on the basis of reasoning reflected therein.

5. From the perusal of the Complaint, it cannot be said that there is failure to disclose cause of action. On conjoint reading of the Complaint, it is apparent that the cause of action has been disclosed and therefore no case is made out under Order 7 Rule 11(a) for rejection of the Complaint.

6. In so far as the issue of limitation is concerned, the same is a mixed issue of law. No statement has been pointed out from the Complaint on the basis of which it can be said that the suit is barred by law of limitation. At this stage, it is not permissible to look into the written statement or the defence which the Defendants may have in the matter. Besides, the learned trial Judge has observed that mutation entries in revenue records are really not determinative of the title of the parties but only for fiscal purpose. Therefore, the issue as to whether the knowledge in the mutation entry comes for

running of limitation is also an arguable issue which could not have been looked into at the stage of limitation under Order 7 Rule 11 of CPC. There is no jurisdictional error in the view taken by the learned trial Judge.

7. Therefore this Revision application is liable to be dismissed and is hereby dismissed.

8. However, the observation in the impugned order and for that matter in the present order shall not influence the learned trial Judge whilst deciding the suit on merits in accordance with law.

9. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)