

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 18 OF 2017**

Kamal Dashrath Sawant	...Applicant
Versus	
Ranganath @ Pandhurang	
Kushabhau Kewate & Anr.	...Respondents

Ms. Chandni Bhatt i/b Mr. Vikram Chavan for the Applicant

Mr. Vilas B. Tapkir for the Respondents

CORAM : REVATI MOHITE DERE, J.
MONDAY, 9th DECEMBER 2019

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant has impugned the order dated 19th November 2014 passed by the learned Joint Civil Judge, Senior Division, Pune, below Exhibit 81 in Special Civil Suit No. 2490/2011 by which the applicant's application under Order VII Rule 11(a) of Civil Procedure Code ('C.P.C'), was rejected.

3 Perused the papers. On 13th December 2011, respondent Nos. 1 and 2 (original plaintiffs) had filed a Suit for declaration and permanent injunction as against the applicant and others. On 15th March 2012, the

applicant filed his written statement in the said Suit being Special Civil Suit No. 2490/2011. On 7th April 2012, the applicant filed an application in the trial Court under Order VII Rule 11(a) C.P.C and sought rejection of the plaint filed by the respondent Nos. 1 and 2 (original plaintiffs). The defendant Nos. 1 and 2 filed their reply to the said application on 23rd April 2012. It appears that in the interregnum i.e. during the pendency of this application filed by the applicant under Order VII Rule 11(a), the respondent Nos. 1 and 2 (original plaintiffs) filed an application for amendment of their plaint on 17th September 2013 and the said application was allowed by the learned Judge vide order dated 19th August 2014. Thereafter, the learned Joint Civil Judge, Senior Division, Pune heard the application filed by the applicant for rejection of the plaint and passed the impugned order on 19th November 2014. Hence, this petition.

4 According to the learned counsel for the applicant, the learned Judge ought to have rejected the plaint filed by the respondent Nos. 1 and 2 under Order VII Rule 11(a), as it did not disclose any cause of action. She also submitted that the learned Judge also ought to have also rejected the plaint as the plaint was barred by limitation under Order VII Rule 11(b) C.P.C.

5 A perusal of the application filed by the applicant in the trial Court under Order VII Rule 11 shows that the said application has been filed specifically under Order VII Rule 11(a) C.P.C and not under Order VII Rule 11(b). As far as the prayer for rejection of the plaint under Order VII Rule 11(a) is concerned, it appears that the learned Judge took into consideration the amended plaint dated 25th September 2014 by which the defendant Nos. 1 and 2 had in para 30n(a) disclosed how the cause of action had arisen on 4th June 2010, when the last conveyance took place. It is not in dispute that the applicant has not challenged the order dated 19th August 2014 by which the respondent Nos. 1 and 2 (original plaintiffs) were permitted to carry out amendment to the plaint and as such the order permitting amendment of the plaint has attained finality.

6 As noted by the learned Joint Civil Judge, Senior Division, Pune, the amended plaint discloses the cause of action, thus bringing the said cause of action within the period of limitation. As far as rejection of the plaint under Order VII Rule 11(b) CPC is concerned, the same has not even been prayed in the original application filed by the applicant (defendant No. 1) and as such the learned Judge has rightly not considered the same.

7 Considering the aforesaid, there is no infirmity in the impugned order dated 19th November 2014 passed by the Joint Civil Judge, Senior Division, Pune, below Exhibit 81 in Special Civil Suit No. 2490/2011. Accordingly, the application is dismissed. However, since the Suit is of the year 2011, the learned Joint Civil Judge, Senior Division, Pune, to decide the same as expeditiously as possible and in any event, within 12 months from the date of receipt of this order.

8 Application is disposed of accordingly.

REVATI MOHITE DERE, J.