

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.253 OF 2018

DR.RAJESH GANPAT RAJE

)...APPLICANT

V/s.

MAJOR GANPAT DNYANOBA RAJE & ANR.

)...RESPONDENTS

Shri K.D.Bhosale, Advocate for the Applicant.

CORAM : A. M. BADAR, J.

DATE : 4th NOVEMBER 2019

P.C. :

1 By this revision petition, the petitioner/defendant no.1 is challenging the order dated 3rd November 2017 passed by the learned 8th Joint Civil Judge, Senior Division, Pune, thereby rejecting the application moved by the petitioner/defendant no.1 under Order 7 Rule 11 of the Code of Civil Procedure (hereinafter referred to as the CPC for the sake of brevity) for rejection of the plaint.

2 Heard the learned counsel appearing for the petitioner/defendant no.1. He argued that the plaint ought to have been rejected by the learned trial court as the relief claimed therein is barred by limitation and the plaint is not disclosing any cause of action. My attention is drawn to the plaint as well as averments made in the application under Order 7 Rule 11 of the CPC.

3 I have considered the submissions so advanced and perused the impugned order. The suit came to be filed by respondent no.1 herein against the petitioner/defendant no.1. The plaintiff is father of the defendant no.1. The plaintiff had gifted half share in the suit property to his son i.e. the defendant no.1. The Gift Deed was executed on 24th January 2012. In April 2016, the plaintiff filed suit for declaration that the Gift Deed executed by the plaintiff in favour of the defendant no.1 on 24th January 2012 be cancelled. Averments made in the plaint filed by the plaintiff/respondent no.1 are to the effect that the plaintiff is

an aged person, and therefore, it was not possible for him to obtain loan from bank and financial institution. Therefore, he gifted the plot to the defendant no.1 i.e. the revision petitioner herein, so as to enable him to get loan from HDFC Bank with an object that after constructing a bungalow on the said plot, all family members would reside thereat. However, according to the averments made in the plaint, the defendant no.1 had committed fraud and by starting construction over the suit plot, he tried to sell out the plot to third party. It is further averred that the society i.e. defendant no.2 had issued a notice to the plaintiff on 21st March 2016 and it was also replied by the plaintiff.

4 Averments in the application under Order 7 Rule 11 of the CPC moved by the revision petitioner/defendant no.1 are to the effect that the Gift Deed was dated 24th January 2012 and the suit came to be filed on 25th April 2016, and therefore, the same is barred by limitation. It is further averred therein that on 17th November 2015, letter was written by the defendant no.1 i.e. the revision petitioner to defendant no.2 for issuance of Membership

Certificate / Share Certificate of the suit property. With this, it is averred that the suit is not disclosing any cause of action.

5 Gift Deed is 24th January 2012. Suit came to be filed on 25th April 2016. Article 59 of the Limitation Act governs the field. The time runs when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first becomes known to him. Averments in the plaint go to show that after execution of the Gift Deed, the plaintiff came to know that fraud is being played on him by the revision petitioner/defendant no.1, as he intended to sell out the suit plot. It is averred that in the year 2016, defendant no.2/society had issued notice to the plaintiff. With this, it is averred that the cause of action for the suit arose on 17th November 2015, and thereafter, on 31st March 2016.

6 In this view of the matter, it cannot be said that the suit filed in the year 2016 is barred by limitation. The cause of action is perfectly reflected in paragraphs 6 and 7 of the plaint.

7 In this view of the matter, it cannot be said that the learned trial court has committed error in rejecting the application under Order 7 Rule 11 of the CPC, moved by the petitioner/defendant no.1. The petition, therefore, fails, and the same is dismissed.

(A. M. BADAR, J.)