

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
CIVIL REVISION APPLICATION NO. 33 of 2018

(Suresh s/o Wadguji Narad -vs- Savit w/o Sanjay Hajare and ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.P. Kshirsagar, Adv. for applicant.
Shri D.I. Jain, Adv. for non-applicants.

CORAM : Z.A.HAQ, J.
DATED : 28th AUGUST, 2019

Heard.

The non-applicant nos. 1 to 5 have filed civil suit
seeking reliefs as follows :

- “ i) Declare that the sale deed dated 21.03.2003 pertaining to filed Survey No. 448/2, Mouza Mouda belongs to P.H. No. 73, Tah. Mouda, District Nagpur not binding upon the plaintiffs;*
- ii) Further be pleased to declare that the sale deed dated 21.03.2003 is null and void.*
- iii) Further be pleased to restrain the defendant no. 4 or his agents, servants, any one else on behalf of the defendant no. 4 to intervene in the peaceful possession of the plaintiff over the disputed house no. 2105 by granting permanent and mandatory injunction against the defendant no. 4 and his agents;*
- iv) Further be pleased to restrain the defendants no.1, 2, 3, and 5 to convert the land, bearing no. 448/2, P.H. No. 73, Mouza Mouda, Tah. Mouda, Distt. Nagpur into N.A. land from the agricultural land;*
- v) Further be pleased to declare that the plaintiffs are entitled for correction of revenue record, the names of the plaintiffs should have been mutated on revenue record as legal heirs of late Vasudeo Vaidya;*
- vi) Further be pleased to correct the record as per the provisions Under Section 155 of M.L.R.C.*

and remove, quash the name of defendant no. 4 pertaining to field survey no. 448/2, P.H. No.73 Mouza Mouda, District Nagpur;

- vii) Further be pleased to restrain the defendant no. 4 to dispose off the property in dispute by granting permanent injunction.*
- viii) Cost of the suit may be saddled against the defendants;*
- ix) Grant any other relief which this Hon'ble Court deems fit and proper in the facts and circumstances of the case."*

The defendant no. 4 had filed an application (Exhibit 20) under Order VII Rule 11(b) and (d) read with Section 9 of the Code of Civil Procedure praying that the civil suit be dismissed on the ground that the claim of the plaintiff was barred by limitation and alternatively that the suit was under valued and the plaintiff has not paid proper court fee. This application is dismissed by the impugned order.

As far as the point of limitation is concerned, according to the defendant no. 4, plaintiffs are seeking declaration that sale deed dated 23.03.2003 is null and void, by filing the civil suit in September, 2016 i.e. beyond the prescribed period of limitation of 3 years. The submission as made on behalf of the applicant (defendant no.4) on this point cannot be accepted as it is based on mis-conception of facts. The plaintiffs are not seeking only this relief, but as seen from the prayer clause of the civil suit, the plaintiffs are seeking other reliefs also. Though the defendant no. 4 submitted that the other reliefs are ancillary reliefs, I am not inclined to accept the submission inasmuch as according to me, the prayer clause (iii), (v) and (vi) can be maintained by the plaintiffs independent of prayer clause (ii) of the plaint.

It is well settled that if any prayer in the plaint can be maintained by the plaintiffs, the plaint cannot be rejected under Order VII Rule 11(d) of the Code of Civil Procedure. Further, I find that the learned Trial Judge has not foreclosed the contentions of the defendant no. 4 on this point. He has kept the issue open for consideration at appropriate stage, recording that the issue of limitation is mixed question of law and facts and will have to be adjudicated on merits.

As far as other submission is concerned, again I find that the prayer made on behalf of the defendant no. 4 that plaint be rejected under Order VII Rule 11(b) of the Code of Civil Procedure is per-mature. There is no adjudication by the Court earlier that the relief claimed by the plaintiffs is under valued. There is no order by the Court directing the plaintiffs to correct the valuation within specified time. In these facts, jurisdiction under Order VII Rule 11(b) of the Code of Civil Procedure cannot be invoked and plaint cannot be rejected.

After examining the controversy and going through the impugned order, I find that the learned trial Judge has not committed any patent irregularity, illegality or error of jurisdiction which necessitates interference by this Court under Section 115 of the Code of Civil Procedure.

The Civil Revision Application is dismissed. In the circumstances, the parties to bear their own costs.

JUDGE