

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL REVISION APPLICATION NO. 22/2018

Yashodabai S. Chauhan

..VS..

Vijay M. Rathod

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

Court's or Judge's orders

Shri N.S. Deshpande, Advocate for the applicant
Shri V.N. Patre, Advocate for the non-applicant

CORAM : Z.A.HAQ, J.
DATED : 19/08/2019

Heard.

By the impugned order, the application (Exh. 23) filed by the applicant – defendant under Order 7 Rule 11 of the Code of Civil Procedure is dismissed. By the application (Exh. 23), the defendant contended that the suit filed by the plaintiff is not maintainable as the claim of the plaintiff is barred by limitation and it is hit by Section 31 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

The learned trial Judge has recorded that the defendant has not been able to point out any provision in the Act of 1947 which creates bar to try and decide the civil suit. Before this Court also, the defendant has not been able to point out any such provision on the basis of which it can be said that the civil suit cannot be entertained. Hence, challenge to the impugned order on this ground is rejected.

As far as the contention of the applicant – defendant that the plaintiff is seeking declaration that he is owner of the suit land as per the sale-deed registered on 26/11/1999, by filing the civil suit in March 2017, and therefore the claim of the plaintiff is barred by limitation, I find that the plaintiff has given explanation in the matter in para no. 6 of the plaint. Whether the explanation given by the plaintiff for filing the civil suit in 2017 for the reliefs as claimed in the plaint is justifiable or not will have to be examined by the trial Court at the trial after affording opportunity to the parties to adduce evidence. The learned trial Judge has rightly refused to reject the plaint summarily on this ground also.

I find that the learned trial Judge has rightly exercised the jurisdiction vested in him and has not committed any irregularity or illegality which necessitates interference by this Court in the extraordinary jurisdiction.

Hence, the civil revision application is **dismissed**.
In the circumstances, the parties to bear their own costs.

JUDGE

Ansari