

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

CIVIL REVISION APPLICATION NO. 27/2018

Savita W. Ingle & ors.

..VS..

Yashwanta M. Gavai

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

Court's or Judge's orders

Shri U.J. Deshpande, Advocate for the applicant(s)
Shri C.A. Joshi, Advocate for the non-applicant

CORAM : Z.A.HAQ, J.

DATED : 28/08/2019

Heard.

The non-applicant – plaintiff has filed civil suit praying for decree for declaration that he is adopted son of Shri Laxman Gavai and is his legal representative. The plaintiff has further prayed for decree for removal of encroachment by the defendants and for possession of the suit property. In the civil suit, the defendants (present applicants) had filed an application (Exh. 10) under Order 7 Rule 11 of the Code of Civil Procedure seeking rejection of the plaint on the ground that the claim of the plaintiff is barred by limitation. This application is dismissed by the impugned order.

The defendants contend that relief as per prayer clause (1) cannot be granted as the claim of the plaintiff is barred by limitation, in as much as the cause of action, if any, for filing the civil suit had arisen on 11/09/2009 and the civil suit is filed after 3 years of arising of the cause of action on 12/08/2013.

Even if this contention of the defendants is to be accepted, the relief as per prayer clause (2) of the plaint can be granted to the plaintiff if he succeeds in proving his case and the limitation for seeking relief as per prayer clause (2) would be of 12 years from the date of arising of the cause of action. It is well settled that if the civil suit for any relief can go on, the plaint cannot be rejected under Order 7 Rule 11 of the Code of Civil Procedure. Hence, it cannot be said that the learned trial Judge has committed any patent irregularity, illegality or error of jurisdiction by rejecting the application (Exh. 10) filed by the defendants.

Hence, I see no reason to interfere with the impugned order.

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

JUDGE

Ansari