

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

WRIT PETITION NO.390 OF 2019

(VIJAY RAGHUNATH RANGARI & OTH...VS.. SUMEDH PURUSHOTTAM MOOL.)

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

Court's or Judge's orders

Shri A.B.Ramteke, Advocate for Petitioners.

CORAM : Z.A.HAQ, J.

DATED : JANUARY 22, 2019.

Heard.

The respondent has filed civil suit praying for decree for declaration that the plaintiff is in peaceful possession of the suit property. The plaintiff has also prayed for decree for specific performance of agreement dated 21st July 2009. In this civil suit, the defendant Nos. 1 and 2 had filed application (Exh.39) under Order VII Rule 11 of the Code of Civil Procedure praying that the plaint be rejected as the claim of the plaintiff for decree for specific performance of the agreement is barred by limitation.

According to the defendant Nos.1 and 2, the agreement of sale dated 21st July 2009 itself laid down that the sale-deed will be executed within six months and in view of this condition the cause of action if any, arose on 20th January 2010 when the defendants failed to execute the sale-deed within six months. This application is dismissed by the learned trial Judge by the impugned order. The learned trial Judge has observed that the civil suit is filed within the prescribed period of limitation.

After examining the material placed on record of the petition, I am of the view that the issue of limitation being an issue of fact and law it cannot be considered at this stage. The learned trial Judge should not have observed that the claim of the plaintiff is within limitation.

However, as the plaint filed by the respondent/plaintiff cannot be rejected under Order VII Rule 11 of the Code of Civil Procedure at this stage, I am not inclined to interfere with the impugned order. It is clarified that the trial Court will have to frame issue on the point of limitation and decide it at appropriate stage after offering opportunity to the parties to prove their case.

This order is passed without issuing notice to the respondent/plaintiff as the order does not affect any of his substantive rights and there is no adjudication on any point.

With the above observations, the writ petition is **disposed**. No costs.

JUDGE

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