

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

916 CIVIL REVISION APPLICATION NO.19 OF 2020

VIJAYKUMAR NAMDEO KALE
VERSUS
BIBINANDA DATTU GIRI AND OTHER

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Advocate for applicant : Mr. P.P. More
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CORAM : V. K. JADHAV, J.
DATED : 18th FEBRUARY, 2020

PER COURT:-

1. Heard learned counsel for the applicant.
2. The applicant is the original defendant. The respondents-plaintiffs have instituted the suit bearing R.C.S. No. 88 of 2009 for declaration of title, declaration in respect of sale deed and decree of perpetual injunction. Pending the suit, the applicant-original defendant has filed an application Exh.95 in R.C.S. No. 88 of 2009 under Order VII Rule 11 (a) and (d) of C.P.C. The applicant-defendant has submitted the said application under Order VII Rule 11 of C.P.C. on the ground that there is no cause of action and suit is barred by law of limitation. By the impugned order dated 2.11.2019, the trial court has rejected the application. Hence, this civil revision application.
3. Learned counsel for the applicant submits that the trial court has not considered the pleadings of the plaintiffs pertaining to

institution of earlier suit bearing R.C.S. No. 38 of 2009. The applicant-defendant has instituted the said suit for decree of perpetual injunction against the respondents-plaintiffs. Learned counsel submits that the trial court has erroneously considered the order of temporary injunction instead of judgment and decree passed by the trial court in R.C.S. No. 38 of 2009. Learned counsel submits that the trial court has decreed R.C.S. No. 38 of 2009 by judgment and decree dated 18.04.2011. Being aggrieved by the same, the respondents-plaintiffs herein have preferred Regular Civil Appeal No. 315 of 2012 and the learned District Judge-2 Latur, by its judgment and order dated 21.8.2015 dismissed the appeal with costs and confirmed the judgment and decree passed by the trial court in R.C.S. No. 38 of 2009. Learned counsel submits that the judgment and decree passed in the said suit operates as res-judicata. Learned counsel submits that as far as the declaration as sought by the respondents-plaintiffs in R.C.S. No. 88 of 2009 pertaining to the sale deed is concerned, the said relief is barred by law of limitation. The said sale deed came to be executed on 30.8.2003 whereas the Regular Civil Suit No. 38 of 2009 came to be instituted in the year 2009.

4. I find no substance in this civil revision application. Though the trial court has not correctly referred the judgment and decree passed in earlier suit bearing R.C.S. No. 38 of 2009, however, the said decree pertains to perpetual injunction wherein lawful possession of

the applicant-defendant is only considered. The suit bearing R.C.S. No. 88 of 2009 came to be instituted by the respondents-plaintiffs herein for the purpose of declaration pertaining to sale deed and declaration about their ownership and so also the decree of perpetual injunction. In view of the same, the judgment and decree of perpetual injunction passed in earlier suit i.e. R.C.S. No. 38 of 2009 does not operate as res-judicata in the present suit. Though the learned counsel for the applicant-original defendant has vehemently made submission in terms of the averments made in the written statement, however, it is well settled that to consider the application under Order VII Rule 11 the averments made in the plaint can only be considered and not the averments made in the written statement. So far as the point of limitation is concerned, there is specific pleading that the sale deed dated 30.8.2003 came to be executed behind the back of the plaintiffs and the respondents-plaintiffs came to know about execution of the said sale deed on 30.6.2009. There is specific pleading in para 7 of the plaint that for the first time in the month of June, 2009 i.e. on 30.6.2009 the applicant-defendant has attempted to dispossess them from the suit land and since the respondents-plaintiffs resisted the said attempt, the applicant-defendant has shown them the false and fictitious sale deed. There is specific pleading that after obtaining the copy of sale deed and on its verification, the respondents-plaintiffs came to know that the applicant-defendant managed fraudulently under the influence of liquor a bogus sale deed which do not confer any right to him. In the

backdrop of these pleadings, the trial court has rightly observed that it is mixed question of facts and law to find out as to whether the suit is within limitation or not. I find no fault in the impugned order passed by the trial court. The revision application is hereby dismissed.

(V. K. JADHAV, J.)

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