

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 475 OF 2019

Inderpalsingh Rajendrasingh Chadha & anr. .Applicants

Vs.

Baljit Ramlal Manchanda & ors. .Respondents

Mr. S. S. Kulkarni, Advocate, for the Applicants

Mr. S. S. Shah i/b. Mr. P. Darandale, Advocate, for the Respondent Nos.
1 to 8

CORAM : REVATI MOHITE DERE, J.

DATE : 14.02.2020

P. C.

. Heard learned counsel for the parties.

2. By this Application, the Applicants have impugned the order dated 08.02.2019 passed by the learned 5th Jt. C. J. S. D., Nashik below Exhs. 54 & 55 in R. C. S. No. 420 of 2010, by which the Applicants' Application (Original Defendant Nos. 9 & 10) seeking rejection of the plaint under O. VII, Rule 11 of the Code of Civil Procedure (for short 'C. P. C.') was rejected.

3. Learned counsel for the Applicants submitted that the Partition Deed entered into between the Respondent No. 1 and the Respondent No. 8 is of 1982 and that pursuant to the said Deed,

measurements were carried out in the year 1987. He submits that under Article 58 of the Limitation Act, right to sue accrued on the date when the Applicants learnt about the alleged bogus Partition Deed i. e. when measurements were done in 1987. He submits that the present suit is filed after 28 years and as such, is barred by the law of limitation. He further submits that even the cause of action disclosed in the plaint is vague. According to the learned counsel, the plaint does not reveal any cause of action and is clearly barred by the law of limitation and as such, the Applicants' Application, seeking rejection of the plaint under O. VII, Rule 11 of the C. P. C. ought to have been allowed.

4. Learned counsel for the Respondent Nos. 1 to 8 (Original Plaintiffs) opposes the Application and submits that no interference is warranted in the impugned order. He submits that the plaint clearly discloses the cause of action and as such, the learned Judge has rightly rejected the Applicants' Application seeking rejection of the plaint under O. VII, Rule 11 of the C. P. C.. Learned counsel for the Respondent Nos. 1 to 8 states that it is the case of the Applicants that the Respondent No. 8 committed fraud on the Respondent No. 1, by entering into a Partition Deed in 1982, and carried out measurements thereafter, by practising fraud on the Respondents and others. He submits that admittedly, the Applicants are the co-owners of the property in question and had not signed the Partition Deed allegedly entered into between the

Respondent No. 1 and the Respondent No. 8, in 1982. He submits that the Respondents (Original Plaintiffs) filed the suit in 2010, only after learning that the Respondent No. 8 had entered his name in the revenue records, thus, giving rise to cause of action.

5. Perused the papers. The Respondent Nos. 1 to 6 are the Original Plaintiffs, who have filed R. C. S. No. 420 of 2010 in the Court of the learned C. J. S. D. , Nashik, for a declaration that the Partition Deed dated 25.09.1982 entered into between the Respondent No. 1 and the Respondent No. 8 be declared illegal. The Applicants (Original Defendants) appeared in the said suit and filed their Written Statement. It appears that the aforesaid Applicants filed two Applications i. e. Exh. 54 and Exh. 55 in the aforesaid suit and sought rejection of the plaint under O. VII, Rule 11 of the C. P. C. on the premise that the suit was barred by limitation. A perusal of the plaint prima facie shows that the issue of limitation, is a mixed question of facts and law.

6. No infirmity can be found in the impugned order dated 08.02.2019 passed by the learned 5th Jt. C. J. S. D., Nashik below Exhs. 54 & 55 in R. C. S. No. 420 of 2010 and as such, the Application being devoid of merit, is dismissed.

7. All contentions of all parties are kept open with respect to

the issue of limitation for being decided at the stage of final disposal of the suit.

8. Accordingly, the Application is disposed of.

(REVATI MOHITE DERE, J.)