

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

CIVIL REVISION APPLICATION NO. 33 OF 2020

Ashok s/o Jethanand Navani

vs.

Jethanand s/o Sunderdas Navani and others

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

Court's or Judge's orders

Mr. Inder F. Jain (Sisodia), counsel for the petitioner.

CORAM : MANISH PITALE J.

DATED : 25/08/2020

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. Heard learned counsel for the petitioner.

3. The petitioner is original defendant No.1 before the Court below. He is aggrieved by order dated 22/07/2020 passed by the Court below, whereby an application filed under Order 7 Rule 11 of the Civil Procedure Code (CPC) has been rejected.

4. The short facts leading upto filing of the present writ petition are that according to the petitioner the suit filed by respondent No.1 (father of the petitioner herein) deserves to be rejected at the threshold as being barred by limitation. It is claimed that the respondent No.1 is seeking to challenge registered sale deeds dated 20/01/1978 and 17/04/1979 after lapse of about 42

years, which cannot be permitted in law. According to the petitioner, even if the averments made in the plaint are to be perused, it becomes clear that no cause of action is made out and that the suit is hopelessly barred by limitation. According to the petitioner the plaint has been cleverly drafted only to get over the bar of limitation and that therefore, it deserves to be rejected at the threshold. Specific reliance is placed on the Judgment of Hon'ble Supreme Court in the case of **Raghwendra Sharan Singh vs. Ram Prasanna Singh (Dead)** by LRs. [AIR 2019 SC 1430].

5. In order to examine the correctness of the impugned order and the contentions raised on behalf of the petitioner before this Court, it would be necessary to peruse the contents of the plaint. Since this petition concerns the question of rejection of plaint under Order 7 Rule 11 of the CPC, a detailed reading of the plaint is necessary to proceed further.

6. A perusal of the plaint shows that the respondent No.1 (original plaintiff) has clearly stated about the existence of the aforesaid sale deeds executed in the years 1978 and 1979. Thereafter in paragraph 3 it is stated in detail as to how according to respondent No.1 the entire consideration amount was borne by the said respondent and the sale deeds were executed in the name of the petitioner, as he was the favourite and eldest son. Thereafter, in paragraph 4 it is stated that an agreement was executed on 12/05/1994 concerning the

said property whereupon a marriage hall was constructed. In the said agreement to which the petitioner was a party, the parties agreed that the profit flowing from the business of the marriage hall constructed on the said property would be shared equally. According to respondent No.1, in paragraph 4 of the plaint, it was specifically stated in the agreement that the ownership in the property continued to be that of the respondent No.1 (i.e. original plaintiff). Thereafter in paragraph 5 of the plaint it is stated in detail as to how the arrangements continued unabated till the year 2017 when the wife of respondent No.1 died. According to the said respondent, the approach of the petitioner changed after the said event and he started refusing to abide by the terms of the aforesaid agreement. This, according to respondent No.1 led to the respondent No.1 and other parties insisting upon the petitioner to abide by the terms of the agreement, yet the greed of the petitioner allegedly kept on increasing and he refused to further cooperate in the years 2018-2019 also, further allegedly threatening to dispose of the property itself.

7. It is on the basis of such averments that it is claimed in paragraph 8 of the plaint that the cause of action arose for filing of the aforesaid suit. A perusal of the aforesaid contents and the cause of action claimed by the respondent No.1 indicates that according to the respondent No.1, the actual threat to the said respondent in terms of his claim in the suit property arose some time

around 2017 to 2020. It is upon the said threat arising that cause of action arose for filing the suit wherein a declaration is sought that the respondent No.1 is the owner of the suit property.

8. In this backdrop, when the contentions raised on behalf of the petitioner are considered, it is found that they have been considered in detail by the Court below in the impugned order. Reference is also made to judgment relied upon by the petitioner and after considering the contents of the plaint in detail, as also the cause of action alleged to have arisen to the respondent No.1, the Court below has held that the application of rejection of plaint deserves to be rejected.

9. This Court has considered the reasoning given by the Court below in the impugned order. It is found that in various paragraphs the Court below has considered the contentions raised on behalf of the petitioner in detail. In fact, reference is also made to a question that would arise in the facts and circumstances of the present case under the provisions of the Benami Transactions (Prohibition) Act, 1988 and bar of a suit under Section 4 thereof in the context of existence of an alleged fiduciary relationship between respondent No.1 and the petitioner. Having taken into consideration all these aspects, the Court below has correctly found that triable issues certainly arise in the suit and that no final view can be expressed at the stage of consideration of the application filed by the petitioner. This Court finds

that the reasoning adopted by the Court below cannot be said to be erroneous.

10. Reliance placed on judgment of the Hon'ble Supreme Court in the case of Raghwendra (supra) appears to be misplaced because the facts in the said case before the Hon'ble Supreme Court, as found paragraph 7 of the reported judgment, are clearly distinguishable. This Court finds that the plaint in the present case cannot be said to be cleverly drafted, so as to get over the bar of limitation. The averments in the plaint pertaining to the nature of cause of action and the manner in which it has allegedly arisen show that the plaint cannot be rejected at the threshold on the ground of limitation.

11. In view of the above, it is found that the writ petition is without any merit and accordingly it is dismissed.

12. Nonetheless, this is an unfortunate case of a dispute amongst family members, particularly between an 82 years old father and his son, which needs to be resolved at the earliest in the interest of justice.

13. In view of the above, although writ petition is dismissed, the Court below is directed to decide the suit expeditiously and preferably within a period of **six months** from today.

JUDGE