

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO. 17 OF 2019

Peter Paul Clement Almeida ...Applicant

Versus

1. Violet Fernandes @ Violet Carmina Araujo @
Violet Carmina Araujo E Fernandes & 6 Ors. ...Respondents

Mr. John Abreu Lobo, Advocate for the Applicant

Mr. J. J. Mulgaonkar, Advocate for the Respondents

CORAM: MANISH PITALE, J

Reserved on: 31st August 2021

Pronounced on: 2nd September 2021

ORDER

1. The original Defendant is before this Court, being aggrieved by the order dated 05.01.2019 passed by the Court of Civil Judge, Senior Division at Mapusa, whereby an application at Exhibit 7 filed under Order 7, Rule 11 of the Civil Procedure Code (CPC), has been dismissed.

2. The Applicant claims that the suit filed by Respondent no.1 before the said Court is barred by limitation on a bare reading of the plaint along with the documents filed with the plaint and that, therefore, the impugned order deserves to be set aside.

3. The Respondent no.1 has filed the aforesaid suit before the Court below with a prayer for declaring that Gift Deed dated 08.11.1974 is illegal, null and void, with a consequential prayer for cancellation of the same. The other prayers in the suit are consequential to the aforesaid main prayer in the suit. It is

claimed on behalf of Respondent no.1 that the cause of action for filing the said suit arose for the first time in July 2015, when the said Respondent perused a copy of the reply/objection filed by the Applicant (Original Defendant) in an Inventory Proceeding. It is then claimed that the cause of action is continuous in nature and that therefore, the suit is within limitation.

4. The Applicant filed the aforesaid application at Exhibit 7 for rejection of the plaint on the grounds that the same was barred by limitation and that the suit was undervalued. The question of the suit being undervalued has not been seriously pressed before this Court and, therefore, this Court has heard the learned Counsel appearing for the parties on the question of limitation.

5. By the impugned order dated 05.01.2019, the Court below has considered the contentions of the rival parties and it has concluded that the plaint does not deserve to be rejected under Order 7 Rule 11(d) of CPC as being barred by limitation, upon a plain reading of the plaint.

6. Mr. John A. Lobo, the learned Counsel appearing for the Applicant, submitted that a perusal of the plaint would show that Respondent no.1, i.e. the original Plaintiff, is the sister-in-law of the Applicant herein. The aforesaid Gift Deed in question admittedly gifts the property to the wife of the Applicant and her maternal aunt. The learned Counsel submitted that the statement made in paragraph 55 of the plaint pertaining to the accrual of cause of action, is falsified by a document filed by Respondent no.1 herself along with the plaint. Attention of this Court was

invited to the said document, which is an order passed by the competent Court in Inventory Proceedings initiated by Respondent no.1. It is recorded in the said order that Respondent no.1 never challenged the aforesaid Gift Deed dated 08.11.1974 for so many decades and that she could not claim that she learnt about the Gift Deed only upon objections being filed in the proceedings. Learned Counsel emphasized that reading of the plaint along with the said document clearly shows that Respondent no.1 was aware about the existence of the said Gift Deed and that therefore, the suit filed in the year 2017 was clearly barred by limitation. It was submitted that the Court below failed to appreciate this aspect of the matter. Reliance was specifically placed on the Judgment of the Hon'ble Supreme Court in the case of *Raghwendra Sharan Singh vs. Ram Prasanna Singh (Dead) by LRs*¹.

7. On the other hand, Mr. J. J. Mulgaonkar, the learned Counsel appearing for Respondent no.1, submitted that the contentions raised on behalf of the Applicant are without any substance and that reliance placed on the document filed along with the plaint cannot take the case of the Applicant any further. By inviting attention to the contents of the plaint, the learned Counsel submitted that a specific statement was made in paragraph 55, to the effect that the Respondent no.1, i.e. the Original Plaintiff, became aware of the Gift Deed only upon perusing the reply/objection filed in the Inventory Proceedings. It was emphasized that while considering an application under Order 7 Rule 11(d) of the CPC, the Court has to look only at the plaint and then decide as to whether the same can be said to be

¹ 2019 SCC OnLine SC 372

barred by limitation. As regards the document on which reliance was placed by the learned Counsel for the Applicant, it was submitted that the said order passed by the Court was in Inventory Proceedings, which was obviously not binding on the Civil Court and the said order itself is dated 04.11.2016, thereby indicating that the suit filed by Respondent no.1 in the year 2017, cannot be said to be barred by limitation. Learned Counsel placed reliance on the Judgment of the Hon'ble Supreme Court in the case of *Chhotanben & Ors. vs. Kiritbhai Jalkrushnabhai Thakkar & Ors.*².

8. Heard the learned Counsel for the rival parties and perused the material on record. Before considering the rival contentions raised in the present application, it would be appropriate to refer to the settled position of law as regards the approach to be adopted by the Court while considering an application for rejection of the plaint. It has been held repeatedly that while considering such an application, the Court is supposed to consider the contents of the plaint. It is also held that the documents filed along with the plaint can also be perused, although the veracity of the documents cannot be gone into. The emphasis is on the aspect that the Plaintiff approaching the Court cannot be permitted to create an illusory cause of action by adopting clever drafting. The Court has to see through such an attempt of clever drafting and analyse the plaint to conclude as to whether it could be said to be barred by limitation, even if the contents of the plaint were to be accepted.

² (2018) 6 SCC 422

9. In the present case, Respondent no.1 has challenged the Gift Deed dated 08.11.1974 by filing the suit in the year 2017. There can be no doubt that Respondent no.1 would be entitled to raise such a challenge if she claims that she became aware about the said Gift Deed within three years prior to the filing of the suit. A perusal of the plaint shows that the Respondent no.1 has referred to the aforesaid Gift Deed dated 08.11.1974 and in paragraph 55 of the plaint, it is stated as follows:

“55. The cause of action arose sometime in the month 30th of July 2015, when the Plaintiff perused a copy the reply/objection filed by the defendants in the inventory proceedings no. 506/2014/F and perused the said deed of free gift. The cause of action is continuous and that the suit is not barred by the law of limitation. The said deed of free gift is based on fraud; the subsequent mutation & and inventory proceedings are also based on fraud and the same stands vitiated and hence there is no bar of limitation to get the same declared null and void.”

10. According to Respondent no.1, she became aware of the existence of the aforesaid Gift Deed dated 08.11.1974 in July 2015 when a reply/objection was filed by the Applicant herein and other Defendants in Inventory Proceedings initiated in the year 2014. Thus, on a plain reading of the plaint, particularly paragraph 55 quoted above, it becomes clear that Respondent

no.1 claims that she became aware of the Gift Deed in July 2015, and hence the suit filed in the year 2017 was within limitation.

11. The learned Counsel appearing for the Applicant has placed much emphasis on a document filed along with the plaint, which is an order dated 04.11.2016 passed by the Court of Civil Judge, Junior Division at Mapusa, in Inventory Proceeding No. 506 of 2014. This is the very Inventory Proceeding that is referred to in paragraph 55 of the plaint, quoted above. By placing much emphasis on paragraph 8 of the said order, the learned Counsel appearing for the Applicant claimed that the Respondent no. 1 evidently had knowledge of the existence of the Gift Deed dated 08.11.1974, much before the objections were filed in the said proceedings and that, therefore, on a reading of the plaint along with the said document, it could be concluded that the suit was barred by limitation.

12. This Court has considered the aforesaid document. It is an interim order in the Inventory Proceedings and the operative portion of the order concerns rejection of prayer for the removal of Respondent no.1 from the post of *Cabeca de Casal*, amongst other things. There is also a direction for an additional statement on oath in the said proceedings. The observations made in the said order can certainly not be binding on the Civil Court, the doors of which have been knocked by Respondent no.1 by filing the aforesaid suit. It cannot be said that a bare reading of the said document i.e. order dated 04.11.2016, unequivocally demonstrates that Respondent no.1 conceded to the fact that she always had knowledge about the existence of the Gift Deed dated 08.11.1974 and that consequently the suit was barred by

limitation. In any case, the said order is dated 04.11.2016 and the suit was filed in the year 2017.

13. This Court is of the opinion that a bare reading of the plaint even along with the said document filed with the plaint i.e. order dated 04.11.2016, passed in the Inventory Application Proceedings, cannot lead to a finding at this stage, at the threshold, that the suit is barred by limitation. It is a matter concerning a mixed question of law and facts, thereby warranting determination of the said question after giving opportunity to the parties to lead evidence.

14. The Court below has considered these aspects of the matter, including the claim of the Applicant that Respondent no.1 has indulged in clever drafting for creating an illusion of cause of action. The Court below has properly distinguished the facts of the present case in order to reject the contentions raised on behalf of the Applicant.

15. Insofar as judgment relied upon by the learned Counsel for the Applicant i.e. the Judgment passed by the Hon'ble Supreme Court in the case of ***Raghwendra Sharan Singh*** (supra), is concerned, the Hon'ble Supreme Court concluded on facts in the said case that the Plaintiff was aware about the execution of the Gift Deed in question and challenge to the same was sought to be raised after 22 years. The facts of the present case are distinguishable and hence, reliance placed on the said Judgment can be of no avail for the Applicant.

16. The learned Counsel appearing for the Respondent no.1 is justified in relying on the judgment of the Hon'ble Supreme Court in the case ***Chhotanben*** (supra), wherein the Hon'ble Supreme Court held that while examining an application for rejection of plaint filed under Order 7 Rule 11 (d) of the CPC, it is necessary to examine the averments of the plaint and the plaint is to be read as a whole. If, upon reading the plaint and the documents filed therewith the Court finds that the issue of limitation is a triable issue, the application for rejection of the plaint ought to be dismissed. This is exactly what the Court below has done while passing the impugned order and hence, it is found that the present Revision Application is without any merit.

17. Accordingly, the Revision Application is dismissed.

MANISH PITALE, J.

ANDREZA PEREIRA Digitally signed by ANDREZA PEREIRA
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