

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

CIVIL REVISION APPLICATION NO.96 OF 2021

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Smt. Meena Yashwant Korlekar and Anr. ..Applicants
Versus
Shri. Nilesh Hemant Korlekar and Ors. ..Respondents

Mr. Vaijanath P. Vaze, for the Applicants.
Mr. Anurag Ghag a/w Ashish Dubey, for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 2nd MARCH, 2022

PC.

1. This revision is directed against the order impugned passed below Exh.16 on 20th March, 2021 by Joint Civil Judge Junior Division, Uran whereby applicants'/defendants' application under Order VII Rule 11(a) and (d) of the CPC is dismissed.

2. Contentions of learned counsel for the applicants/defendants are, as far as the claim made in RCS No.108 of 2017 is barred by *res judicata*, so also the limitation. So as to substantiate his aforesaid contentions, he would claim that the bundle of facts narrated in the plaint does not disclose the cause of action leading to the suit claim is hit by the principle of *res judicata* that the proceedings in relation to apportionment to which the respondents/defendants were party through their father were decided against the plaintiffs and as such order will operate against the

plaintiffs/respondents. In addition, it is claimed that the suit claim is based on will dated 26.06.1969. Execution of such will and subsequent will dated 24th January, 1973 was within the knowledge of the plaintiffs and that being so, suit is not brought within limitation of three years.

3. Counsel for the respondents would support the order impugned.

4. Trial Court while dealing with the claim of the applicants for rejection of plaint under Order VII Rule 11(a) and (b) of the CPC was sensitive to the pleadings which are in the nature of bundle of facts disclosing cause of action therein. The Court below then noticed that in earlier round of litigation in the matter of apportionment of compensation what was referred was will dated 24th January, 1973. The fact remains that even if present suit is based on the will dated 26.06.1969, it is brought to my notice that from 1975-94 father of the plaintiffs was not traceable as could be inferred from the proceedings produced from the record of District Judge in land acquisition matter. In 1995, father of the plaintiffs expired and as such plaintiffs brought the suit subsequent thereto i.e. in the year 2017. As such, it is the contention of the plaintiffs that neither the proceedings in question nor the will was in their knowledge. Whether the will was within knowledge of the plaintiffs and suit was brought within time can be termed as mixed question of law and Trial Court can deal with the said issue upon

appreciation of evidence while deciding the suit claim on merits.

5. In view of above, I hardly see any failure on the part of the Trial Court to exercise jurisdiction in favour of the plaintiffs. That being so, revision lacks merits.

6. As such, revision application stands dismissed.

[NITIN W. SAMBRE, J.]