

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION 170 OF 2021

Smt. Vidula Ashish Phule ..Applicant

V/s.

Yasmin Shafi Sheikh
through POA Holder Sameer
Inambaksh Mulani and Ors.

..Respondents

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CHAVAN

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Mr. Agasti Vibhute for the Applicant.

CORAM : ROHIT B. DEO, J.

DATE : 17 JUNE 2022

P.C.

1. The Applicant is Defendant 2 in Special Civil Suit 1924 of 2019, who is aggrieved by the order dated 03.05.2021 rendered by the 17th Civil Judge, Senior Division, Pune rejecting the application under Order VII Rule 11 of Code of Civil Procedure, 1908 (Code). Defendant 2 sought rejection of the plaint on the premise that the suit is barred by limitation on the face of the averments in the plaint. Other contention is that *qua* the Will Deed dated 12.02.1985 executed by deceased Shantaben Maganlal Patel, the Competent Court has already issued Letter of Administration and the suit is barred in view of provisions of Section 216 of the Indian Succession Act.

2. The case of the Plaintiffs is that vide Sale Deed dated 26.07.1965 which is duly registered, the suit property was purchased by the predecessor of the Plaintiffs, from Smt. Shantaben Managlal Patel and Shet Bacchanlal Savla, and the Plaintiffs are in peaceful possession of the suit property.

3. The Plaintiffs contend that taking advantage of the fact that the names of the Plaintiffs were not mutated in 7/12 extract, the Defendants executed several fraudulent documents, which fraud came to light only when the husband of Plaintiff 1 Mohd. Shafi Shaikh expired on 19.02.2013, and the Plaintiffs made inquiries and collected the documents. The Plaintiffs contend that a fraudulent Will, and at any rate a Will which could not have conferred any title, was shown to have been executed by Shantaben Maganlal Patel on 12.02.1985 and the subsequent documents *qua* which the declaration is sought in the suit came to be executed on the basis of the fraudulent Will.

4. The learned Trial Judge has held that in the factual matrix the issue of limitation would be a blended issue of facts of law. I entirely agree. I may further note, that if the case of the Plaintiffs that the Plaintiffs are the owners of the suit property by virtue of the registered Sale Deed executed on 26.07.1965 is accepted by the Court, the issue which would arise would be whether the prayer for cancellation of the conveyance deeds which are

executed on the basis of the Will Deed is at all required, and whether a declaration simplicitor shall not suffice. Be that as it may, it is well settled that *qua* the relief of declaration, limitation is not necessarily triggered from the date of execution of documents, the limitation is triggered when the right to sue accrues as is envisaged under Article 58 of the Indian Limitation Act. Right to sue shall accrue when there is a serious and genuine threat to the rights of the Plaintiffs. In the factual matrix, the learned Trial Judge was right in not nipping the litigation in the bud. The question of limitation can appropriately be addressed and adjudicated only after the parties adduce evidence.

5. Insofar as the submission that the suit is barred in view of the Section 216 of the Indian Succession Act, *prima facie* the suit as is framed, which is instituted by a person who is claiming to be the owner of the property by virtue of a document executed much prior to the execution of the Will Deed, may not attract the said provision. However, no definite observation is necessary. While deciding order VII Rule 11 application, the learned Trial Judge could not have, even otherwise, looked into the defence and the consideration is required to be restricted to the plaint averments and the documents which are deemed part of the plaint.

6. While I see no reason to interfere with the order impugned, it is clarified that all the questions are left expressly open for the Trial Court to consider and adjudicate at an appropriate stage

after the evidence is adduced. Subject to the observations supra, the Civil Revision Application is dismissed.

(ROHIT B. DEO, J.)