

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

CIVIL REVISION APPLICATION NO.29 OF 2022

(Sunil Diwakarrao Mahajan Vs. State of Maharashtra, thr. its Collector, Yavatmal
and others)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. J. A. Malnas, Advocate for Applicant.

CORAM: ROHIT B. DEO, J.

DATE: 15th MARCH, 2022.

The applicant is the defendant 12 in Regular Civil Suit 36/2018 instituted by respondent 14 Deepak Madhukar Mahajan *inter alia* seeking a declaration that the sale-deeds dated 07.01.1985 and 10.01.1985 executed in favour of the grand-father of the plaintiff Mr. Wamanrao Mahajan is null and void.

2. The substratum of the plaint is that in the partition which took place between Wamanrao Bapurao Mahajan and his sons on 15.05.1978, certain agricultural fields fell to the share of the defendant 3 – who is the father of the plaintiff and the plaintiff. The plaintiff and his father further partitioned the agricultural property on 12.10.1979 and agricultural field Survey 28/2 fell to the share of the plaintiff and accordingly mutation entry was effected. The plaintiff further avers that he was always perceived by the family members to be irresponsible and extravagant and

therefore, fearing that he would sell the agricultural field, his father and the grand-father Wamanrao got the sale-deed of Gat 28/2 executed in the name of the grand-father Wamanrao. Pursuant to the death of Wamanrao, defendants 3 to 14 got their names mutated as legal heirs. However, the assertion in the plaint is that the sale-deed did not confer any title, that the said document was not acted upon and the plaintiff continued to be in possession. The cause of action which is pleaded in the plaint is the insistence of the legal heirs of Wamanrao to claim the compensation qua the acquisition of Survey 28/2.

3. The defendants 4 to 14 preferred an application which is signed only by their counsel purporting to be one under Order VII Rule 11 of the Code of Civil Procedure (Code) contending that on the face of the plaint averments the suit is barred by limitation. The other objection in the party is that since the plaintiff is seeking injunction qua the amount of compensation, the suit is under valued.

4. In so far as the objection on the ground of valuation, as and when there is an adjudication, it would be open for the Court to direct the plaintiff to pay deficit court fee and the question of rejection of the plaint will arise only if despite such a direction the court fees are not paid.

5. In so far as the ground of limitation is concerned, it is well settled that for consideration of an application under Order VII Rule 11 of the Code, all that can be looked

into is the plaint and the documents on which the plaintiff has placed reliance. Neither the defence nor the averment in the application under Order VII Rule 11 of the Code are relevant. (See *Dahiben v. Arvinbhai Kalyanji Bhanusali (Gajra) dead through legal representatives and others (2020) 7 SCC 366.*)

6. It is equally well settled, that the plaint must be read as a whole and holistically and stray sentences here and there cannot bring into play the provisions of Order VII Rule 11 of the Code. The case of the plaintiff is that the sale-deed was not acted upon and that the cause of action arose when the defendants 4 to 14 asserted exclusive claim to compensation on the premise that they are the legal heirs of Wamanrao in whose favour the plaintiff was made to execute the sale-deed. The controversy can only be decided on the basis of evidence adduced, and the contention of the defendants 4 to 14 can be appropriately decided at the stage of final hearing.

7. I see no error in the order impugned which rejects the application under Order VII Rule 11 of the Code.

8. The civil revision application is dismissed.

JUDGE

NSN