

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

CIVIL REVISION APPLICATION NO.123 OF 2019

(Vasant s/o Narayanrao Mankar and another Vs. Premlal s/o Ramprasad Khote 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. A. A. Bade, Advocate for Applicants.
Mr. R. T. Anthony, Advocate for Respondent 1.

CORAM: ROHIT B. DEO, J.

DATE: 28th MARCH, 2022.

The applicants are the defendants 1 and 2 in Special Civil Suit 287/2019 which is brought by the non-applicant 1 seeking decree of declaration and perpetual injunction.

2. It would not be necessary to reproduce in great detail the averments in the suit. Suffice it to note, that according to the plaintiff he acquired title to the suit plot by virtue of registered sale-deed dated 03.11.2008 executed by defendant 4 Mr. Narayan Urkude. The plaintiff asserts that in the year 2018 he entered into an agreement to sell the suit property in favour of Mr. Rajiv Ranjan and in order to enable the prospective purchaser to verify the title handed over certain documents. The plaintiff further asserts that a public notice was inserted in the local newspaper inviting objections to the proposed transaction which did not evoke any response and the plaintiff executed the sale-deed in

favour of Mr. Rajiv Ranjan on 06.07.2018 and handed over the possession. The plaintiff contends that the purchaser erected compound and affixed his board and it was in October, 2018 that a stranger approached Mr. Rajiv Ranjan and questioned his title. Mr. Rajiv Ranjan was given to understand that the plot was purchased by the defendant 1 in the year 2009.

3. According to the defendants 1 and 2, the suit plaint is liable to be rejected on twin grounds. The first is that the court fees paid is insufficient. This cannot be a ground for rejection of the plaint unless there is a judicial order directing the plaintiff to pay the court fee which is not complied with. The other ground is that considering that the sale-deed dated 06.02.2019 is assailed, the suit is beyond limitation.

4. I am refraining from making any positive observation lest the parties suffer any prejudice. Ultimately the issue of limitation is a mixed question of fact and law, in the present case. Further, the plaintiff claims that he is the registered owner by virtue of an earlier sale-deed and the cause of action arose only in October, 2018 when the defendant 1 claimed to have acquired title by sale-deed executed subsequently i.e. on 06.02.2009. I see no error in the finding recorded that the plaint cannot be rejected on the ground of the suit being barred by limitation.

5. At this stage, the learned counsel Mr. Bade argues that the Civil Court has no jurisdiction since the dispute lies only before the Co-operative Court. *Prima facie*, considering the averments in the suit plaint, I do not think that the dispute falls within the exclusive jurisdiction of the Co-operative Court. However, considering that this aspect does not appear to have been argued, and in any event, the same is not touched in the order impugned, I leave the objection open for the defendants 1 and 2 to agitate at an appropriate stage.

6. I see no reason to interfere in writ jurisdiction, the civil revision application is dismissed.

JUDGE

NSN