

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

CIVIL REVISION APPLICATION NO. 8 OF 2020

(Manjeetsingh s/o Surjeetsingh Hora ..vs.. Shri Sanjay Rambhau Zanzad 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. Sawan Alaspurkar, Counsel for the applicant.

CORAM : ROHIT B. DEO, J.

DATED : 10-02-2022

Hearing was conducted through video conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. The applicant is defendant 9 in Special Civil Suit 1/2018 which is instituted by the plaintiff-respondent 1 herein seeking partition, possession, declaration, injunction and cancellation of sale-deeds.

3. Perusal of the suit plaint reveals that the substratum of the claim is that the plaintiff, as coparcener, has share and interest in the suit property. The suit property is described in paragraph 1 of the suit plaint, and comprises three agricultural fields situated at Mouza-Dhaba, Taluka-Nandgaon Khandeshwar, District-Amravati. According to the plaintiff, and the position is not disputed, defendant 9 purchased property described at serial (c) in paragraph 1 of the suit plaint vide registered sale-deed dated 16-4-2013.

4. Defendant 9 preferred an application purportedly under Order VII Rule 11 of the Civil Procedure Code (Code) on the ground that the relief claimed against defendant 9 is barred by limitation. Defendant 9 alleged in paragraph 3 that the plaintiff obtained the copy of the sale-deed on 22-4-2013, and therefore, the civil suit which is instituted in the year 2018, is barred by limitation.

5. The learned trial Judge rejected the application under Order VII Rule 11 of the Code, *inter alia* relying on the decision of the Hon'ble Supreme Court in ***Madhav Prasad Aggarwal and another v. Axis Bank Limited and another, (2019) 7 SCC 158*** which articulates that it would not be permissible to reject the plaint qua a particular defendant. The learned trial Judge then referred to Regular Civil Suit 14/2013 and reasoned that one of the issues which may arise, would be applicability of Section 14 of the Indian Limitation Act and for resolution of the said issue, evidence will have to be adduced.

6. The learned Counsel for defendant 9 Mr. S. Alaspurkar would argue that the decision of the Hon'ble Supreme Court in *Madhav Prasad Aggarwal and another v. Axis Bank Limited and another* is in consistent with the earlier decision in ***Church of Christ Charitable Trust and Educational Charitable Society represented by its Chairman v. Ponniamman Educational Trust represented***

by its Chairperson/Managing Trustee, (2012) 8 SCC 706 and since both the decisions are rendered by Two Judges Benches of the Hon'ble Supreme Court, the decision earlier in point of time will prevail. Mr. S. Alaspurkar would invite my attention to the Division Bench decision of this Court in *Sheela Ram Vidhani and another v. S.K. Trading Company and others, 2021 SCC OnLine Bom. 864*, to buttress the submission that following the earlier decision of the Hon'ble Supreme Court in *Church of Christ Charitable Trust and Educational Charitable Society represented by its Chairman v. Ponniamman Educational Trust represented by its Chairperson/Managing Trustee*, this Court has held that a plaint can be rejected as a whole against some of the defendants.

7. It would not be necessary to delve deeper in the submission canvassed by Mr. S. Alaspurkar since even *de hors* the issue of rejection of plaint qua a particular defendant, I am satisfied that the learned trial Judge has arrived at the right conclusion.

8. It is well settled that while considering an application under Order VII Rule 11 of the Code, the Court will have to restrict the consideration only to the averments in the suit plaint. The averments in the suit plaint will have to be holistically read and understood, *de hors* the defence and indeed *de hors* the factual assertions in the application under Order VII Rule 11 of the Code. The plaintiff is seeking decree of partition.

Irrefutably, the claim is within limitation, to the extent partition and separate possession of ancestral property is sought. In this view of the matter, even if, it assumed *arguendo*, that there is delay in challenging the sale-deed pertaining to a part of the ancestral property qua which the partition is sought, that aspect may not be necessarily decisive. That apart, the plaintiff has made several factual assertions and the learned trial Judge has noted that considering the factual assertions made on the basis of assertions of doctrine of *lis pendens* and the applicability or otherwise of Section 14 of the Limitation Act, in view of the pendency of the earlier instituted suit, evidence will have to be adduced. The approach of the learned trial Judge is unexceptionable. Issue of limitation is more often than not a mixed issue of fact and law and considering the factual matrix, it would be appropriate if the issue of limitation which is pressed in service for rejection of plaint, is decided by the learned trial Judge after the parties adduce evidence.

9. I see no reason to interfere with the view taken by the learned trial Judge.

10. Keeping open the objection on the ground of limitation, which objection shall be adjudicated at the stage of final hearing of the suit, the petition is dismissed.