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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3719 OF 2022

Babasaheb Alias Baban Tukaram Ingale & Ors PETITIONERS

VERSUS

Sandhipan Tukaram Harkel RESPONDENTS

.....
Mr. N. K. Tungar, Advocate for the petitioners
Mr. M. P. Kale, Advocate for respondent No.1
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 11th APRIL, 2023

ORDER :

1. The petitioner is aggrieved by order passed by learned Civil Judge, Junior Division, Pathari, District – Parbhani below Exhibit-19 in Regular Civil Suit No. 34 of 2020, thereby rejecting the application filed by the petitioner under Order VII, Rule 11 of the Civil Procedure Code.
2. Respondent No.1 – plaintiff has filed the suit for declaration that he is owner of the suit house and for recovery of possession and for perpetual injunction.
3. The suit was resisted by the defendants by filing written statement. Application Exhibit-19 is filed by the defendants

claiming that previously the plaintiff had filed Regular Civil Suit No. 7 of 1998 in which it was claimed that there is encroachment of defendants over the house No. 175/1 and the present suit house is part and parcel of the suit property mentioned in the earlier suit. The relief, which is claimed in the present suit ought to have been claimed at that time, when the previous suit was filed. After a period of 23 years, present suit is filed, which is time barred and, therefore, the plaint be rejected in view of Order VII, Rule 11 (a) (b) and (d) of the Civil Procedure Code. Said application is rejected by the Trial Court. Hence, the present writ petition.

4. Heard learned advocate for the petitioners and the learned advocate for the respondent. Perused the grounds raised in the writ petition, documents annexed with the same and the impugned order.

5. In the present suit, the plaintiff has claimed that cause of action for filing the present suit has arisen to the plaintiff on 7th November, 2019 when the defendants started obstructing to the possession of the plaintiff in the suit house, though perpetual injunction was granted in his favour in the earlier suit.

6. It appears from the record that admittedly, previous suit

was simplicitor for injunction and the present suit is filed for the relief of declaration and recovery of possession and for perpetual injunction. Cause of action in the earlier suit and the present suit appears to be different. At the time of filing of previous suit, the relief of recovery of possession was not available to the plaintiff.

7. In that view of the matter, there is no substance in the contention of the petitioners that the plaint is liable to be rejected in terms of the order VII, Rule 11 of the Civil Procedure Code.

8. The Trial Court has passed a well reasoned order. No illegality or perversity is found in the order impugned in the present petition. Writ petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE