

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 84 OF 2022

Babruwan s/o Yadav Pawar & another Applicants

Versus

Sarubai Pandurang Sonkawade & others Respondents

Mr. A. V. Patil, Advocate for the applicants.

CORAM : R. M. JOSHI, J.

DATE : 2nd MAY, 2023.

PER COURT :

1. This civil revision application is filed raising objection to the order dated 17th February, 2022 passed by Civil Judge Junior Division, Lohara in Regular Civil Suit No. 150/2019 whereby application Exhibit 17 filed by defendant No. 2 under Order 7 Rule 11 of the Code of Civil Procedure is rejected.

2. Learned counsel for defendant No. 2 submits that the Trial Court has failed to consider the pleadings of the plaintiffs in its entirety and has not appreciated that the suit is filed beyond limitation. He also contends that the sale-deeds are challenged after about 20 years and hence by placing reliance upon the judgments of the Hon'ble Apex Court in the case of Raghwendra Sharan Singh vs.

Ram Prasanna Singh (Dead) by LRs., AIR 2019 SC 1430 and T. Arivandandam vs. T. V. Satyapal and others, AIR 1977 SC 2421, he states that the Trial Court has committed error in not appreciating the aforesaid facts and refused to reject the claim under Order 7 Rule 11 of the Code of Civil Procedure.

3. It is settled position of law that for the purpose of deciding application under Order 7 Rule 11 of the Code of Civil Procedure, the Court is required to consider only pleadings and the documents filed along with the plaint. The pleadings need to be considered in entirety and not in piecemeal. Similarly, the defence of defendants in written statement or even in application under Order 7 Rule 11 of the Code of Civil Procedure cannot be looked into for the said purpose.

4. The suit is filed by plaintiffs for declaration that the sale-deed executed by defendant No. 1 is not binding on them. It is contended by plaintiff No. 1 that she was resident of Kalburgi and was not having relevant information with her. It is also contended that after demise of her husband, being illiterate she could get

information only after search. It is alleged that the defendants have obtained the documents by playing fraud.

5. The suit is for declaration as well as injunction. Learned Trial Court has observed on the basis of pleadings that the suit filed for declaration is barred by limitation. However, the suit is not only for declaration but also for claiming possession of the suit property on the basis of title. Once the suit is based upon title the cause of action would accrue for the plaintiff only when defendants reject the claim of plaintiffs. The cause of action spelt out in plaint, atleast *prima facie* brings the suit within the period of limitation.

6. No doubt, as held in case of T. Arvandandam (supra) by Hon'ble Apex Court, the Court should exercise the power under Order 7 Rule 11 of the Code of Civil Procedure, where reading of the plaint shows that it is vexatious or meritless. However, at the plain reading of plaint it cannot be held that suit is vexatious. Needless to say that contentions of defendant in written statement or even in application filed under order 7 Rule 11 of the Code of Civil Procedure cannot be considered at this stage.

7. In such circumstances, no fault can be found with the impugned order. Hence, civil revision application stands dismissed.

8. Pending civil application if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

dyb