

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO.122 OF 2023

MR. SHAIKH HANIF IBRAHIM BAGWAN AND ANOTHER
VERSUS
MR. SAGAR MADHUKAR GUNJAL AND ORS.

...
Advocate for applicants : S. R. Sapkal
...

CORAM : ARUN R. PEDNEKER, J.
DATED : 25/07/2023

ORDER :

1. By the present Civil Revision Application, the applicants/original defendant Nos. 3 and 4 are challenging the order dated 28.4.2023 passed by the learned 6th Joint Civil Judge, Senior Division, Ahmednagar below Exh. 31 in Regular Civil Suit No. 14/2023, dismissing their application filed for rejection of plaint under Order VII, Rule 11 of Civil Procedure Code.

2. Brief facts, giving rise to the present CRA, can be summarized as under :-

Plaintiff/respondent No. 1 herein has filed a suit for declaration of title over the suit property, possession, injunction and mesne profits. The plaintiff also sought declaration that the defendant Nos. 1 and 2 have no legal right, authority and title to execute the second sale deed and defendant Nos. 3 and 4 have not acquired any legal title by virtue of second sale deed.

3. It is the case of the plaintiff that the plaintiff has purchased the suit property from defendant Nos. 1 and 2 by virtue of sale deed dated 30.10.2013, which came to be registered on 09.1.2014. On the basis of title, the plaintiff sought possession of the suit property, injunction and

above relief of declaration. The plaintiff states that the plaintiff was dispossessed by defendant Nos. 3 and 4 on 7.2.2013. The suit was filed on 10.1.2023. It is the contention of the plaintiff that defendant Nos. 3 and 4 illegally and forcibly took possession of suit flat. The plaintiff requested for possession of suit flat by showing his title of document, but the defendants have refused to give possession. Immediately thereafter police complaints were also filed. Therefore, the plaintiff filed suit for possession, declaration on the basis of his title.

4. The suit is resisted by defendant Nos. 3 and 4. The defendant Nos. 3 and 4/applicants herein filed an application for rejection of plaint under Order VII, Rule 11 of CPC. It is the contention of the defendants/applicants that sale deed between defendant Nos. 1 and 2 and defendant Nos. 3 and 4 is executed on 7.2.2014 and the declaration is sought in the suit in the year 2023. It is the contentions of the defendants that the suit is clearly barred by limitation. The learned counsel submits that plaintiff was aware of the sale deed right at the time when sale deed was executed. It is the contention of the defendants that defendants took over possession in the year 2014. Thus, the cause of action for filing suit arose in the year 2014 itself and the suit is filed in the year 2023. Thus, the suit is barred by the limitation and therefore, the defendants prayed for rejection of plaint under Order VII, Rule 11 of CPC.

5. The Trial Court on consideration of the application held that though the prayer of declaration is not within limitation, the relief of possession is within limitation and that Order VII, Rule 11 of CPC, therefore does not permit to reject the particular portion of the plaint. The concept of partial litigation is not applicable and the question of limitation is mixed question of

fact and law and it would not be appropriate to reject the plaint without giving opportunity to the parties to lead their evidence on the point of limitation. The Trial Court, thus, rejected the application under Order VII, Rule 11 of CPC filed by the applicants. The said order is challenged in the present CRA.

6. The learned counsel for the applicants submits that the suit is clearly barred by the limitation. The learned counsel submits that on plain reading of the plaint, it appears that plaintiff is dispossessed from the suit property 7.2.2014 and the sale deed between the defendant Nos. 1 and 2 and defendant Nos. 3 and 4 is executed in the year 2014 and that the cause of action to file the suit arose in the year 2014 and the suit is filed in the year 2023. The learned counsel relied on the judgment of the Supreme Court in the case of **Rajpal Singh Vs. Saroj (Deceased) through Lrs. And Anr. Reported in 2022 SCC OnLine SC 638** to contend that the suit is for declaration that the sale deed is bad in law and said suit can be filed within three years of the knowledge of the sale deed. In the instant case, since the suit is for declaration that the sale deed is bad in law and consequential relief of possession is claimed, the suit for possession could not have been maintained when the relief of declaration is barred by limitation. The learned counsel relied upon para No. 26 of the aforesaid judgment, which reads as under :-

"26.The suit seeking cancellation of the sale deed was required to be filed within a period of three years from the date of the knowledge of the sale deed. Therefore, when the name of the appellant herein - original defendant No.1 was mutated in the revenue records in the year 1996 on the basis of the registered Sale Deed dated 19.04.1996 and when he was found to be in possession and cultivating the land since then, the suit was required to be filed by the

original plaintiff within a period of three years from 1996. The submission on behalf of the original plaintiff (now represented through her heirs) that the prayer in the suit was also for recovery of the possession and therefore the said suit was filed within the period of twelve years and therefore the suit has been filed within the period of limitation, cannot be accepted. Relief for possession is a consequential prayer and the substantive prayer was of cancellation of the Sale Deed dated 19.04.1996 and therefore, the limitation period is required to be considered with respect to the substantive relief claimed and not the consequential relief. When a composite suit is filed for cancellation of the sale deed as well as for recovery of the possession, the limitation period is required to be considered with respect to the substantive relief of cancellation of the sale deed, which would be three years from the date of the knowledge of the sale deed sought to be cancelled. Therefore, the suit, which was filed by the original plaintiff for cancellation of the sale deed, can be said to be a substantive therefore the same was clearly barred by limitation. Hence, the learned Trial Court ought to have dismissed the suit on the ground that the suit was barred by limitation. As such the learned First Appellate Court was justified and right in setting aside the judgment and decree passed by the learned Trial Court and consequently dismissing the suit. The High Court has committed a grave error in quashing and setting aside a well-reasoned and a detailed judgment and order passed by the First Appellate Court dismissing the suit and consequently restoring the judgment and decree passed by the Trial Court. "

7. The learned counsel submits that when the suit is filed for declaration that the sale deed is bad in law and seeks cancellation of sale deed, the same is required to be filed within a period of three years. The learned counsel submits that the Supreme Court has negated the submissions that if the prayer in the suit was also for recovery of the possession, the suit could be filed within a period of 12 years. The relief of possession is a consequential relief and the substantive prayer was for cancellation of the sale deed as well as recovery of possession and therefore, the limitation

period is required to be considered with respect to the substantive relief claimed and not the consequential relief. When a composite suit is filed for cancellation of the sale deed as well as for recovery of the possession, the limitation period is required to be considered with respect to the substantive relief of cancellation of the sale deed, which would be three years from the date of the knowledge of the sale deed sought to be cancelled.

8. In the instant case, it appears that the substantive relief is based on the title document in favour of the applicants and he claimed to have purchased the suit property prior to the sale of the suit property to the defendant Nos. 3 and 4 by defendant Nos. 1 and 2. The possession is sought to be recovered on the basis of title which has accrued to him by virtue of the sale deed in his favour. The relief of cancellation of subsequent sale deed is consequential as the person who sold the property to defendant Nos. 1 and 2 had no title in them to sell the property to defendant Nos. 3 and 4 when the suit flat was already sold to the plaintiff prior to sell to defendant Nos. 3 and 4. The plaintiff's primary prayer is assertion of the title in the suit flat and the consequential relief of possession. The relief of cancellation of sale deed is not primary prayer in the instant case. In view of the same, the judgment relied upon by the applicant is not applicable to the facts of this case and the CRA is accordingly dismissed.

[ARUN R. PEDNEKER J.]

SSC/