

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRA NO.210 OF 2023

1. Rameshchandra s/o. Sawarmal Bagdiya
2. Akshad s/o. Rajesh Agrawal
3. Harsh s/o. Dinesh Agrawal ...Applicants

Versus

1. Lalit s/o. Dayabhai Patel
2. Pravin s/o. Dayabhai Patel
3. Haji Iqbal s/o. Mussa Wasesa
4. Abdul Habib Haji Ibrahim Bagwan ...Respondents

...
Advocate for Applicants : Mr. Dhananjay M. Shinde

...
CORAM : S.G. MEHARE, J.

DATED : DECEMBER 05, 2023

PER COURT:-

1. Heard learned counsel for the applicants.
2. The applicants have impugned the order of the Joint Civil Judge Senior Division, Hingoli passed below Exhibit-12 in Special Civil Suit No.93 of 2023 dated 17.08.2023. The present applicants had prayed for the rejection of the plaint under Order VII Rule 11 on the ground that the suit is expressly barred by limitation.
3. Learned counsel for the applicants would submit that the averments in the plaint reveal that the sale deed was executed on

04.07.2019. The recitals of the sale transactions were specific that the entire consideration had been received. The suit is filed after three years of the execution of the sale deed. Therefore, the suit is barred by law of limitation. However, the Court of first instance did not consider this aspect and erroneously held that the plaint is not liable to be rejected.

4. The law is well settled that while dealing with an application under Order VII Rule 11 of the Civil Procedure Code, the Court has to read the averments of the plaint only. The learned Court of first instance read the plaint averments and observed that the plaintiffs came with a specific case that after execution of said registered sale-deed as per the agreement between them, another agreement was executed and as per the terms of said agreement, it was mutually agreed that if the defendant fails to pay the difference amount of the excess area than the area measuring 0.2 H 70 R, then the registered sale-deed no.3614/2019 dated 25/07/2019 executed by plaintiff to the defendants will be incomplete and liable to be canceled.

5. Learned counsel for the applicants would submit that no excess area as such was remained. It has also been submitted by the learned counsel for the applicants that no such agreement to sell has been placed on record. Learned counsel for the applicants relied on the case of Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead

through Legal Representatives, (2020) 7 SCC 366. In this case, the Hon'ble Supreme Court has held that the plaint shall be rejected where a suit appears from the averments in the plaint to be barred by any law. He would also argue that in the case of Raghwendra Sharan Singh Vs. Ram Prasanna Singh, (2020) 16 SCC 601, the Hon'ble Supreme Court held that the suit would be barred by limitation under Article 59 of the Limitation Act, if it was filed beyond three years of the execution of the registered deed.

6. The facts of the case of Dahiben (cited supra) were that the plaintiffs had filed the suit for cancellation of the sale deed on the ground that the sale consideration fixed by the Collector had not been paid in entirety by the respondent no.1. It was a tenure land. It is true that if the consideration is remained to be paid, a suit for recovery of the consideration may be filed. However, every case has its own facts and circumstances. The suit of the plaintiffs in the case at hand was not barely for the consideration agreed in the sale deed. The plaint averments as appearing from the observations of the Court of first instance reveal that the plaintiffs came with a specific case that if the defendant would fail to pay the difference amount of the excess area than the area admeasuring 0.2 H 70 R then the registered sale-deed no.3614/2019 dated 25/07/2019 executed by plaintiff will be incomplete and liable to be canceled. The plaint averments show the specific contract between the parties. The defendants, as pleaded,

agreed to pay the difference amount of the area excess than the area sold under the said sale deed. In these circumstances, the Court is of the view that there is a factual difference between the case of Dahiben (cited supra) and the case at hand. The case of the plaintiffs appears not based upon the consideration mentioned in the sale deed but it is for the excess area than what has been shown in the sale deed. In view of the apparent difference in the facts with respect to the Supreme Court, the ratio laid down in the case of Dahiben and Raghwendra Sharan Singh (cited supra) would not apply to the case in hand.

7. The rule to read the plaint averments cannot be allowed to be violated by the defendant by putting his defence. The question of limitation has been raised. The learned Court of first instance has correctly observed that it is mixed question of fact and law. The Court of first instance has also correctly applied the principles dealing with the application under Order VII Rule 11 of the Civil Procedure Code. The plaint averments clearly indicates the cause of action. There is no substance in the revision application. Hence, the revision application stands dismissed at the admission stage.

(S.G. MEHARE, J.)