

Jose

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO.22 OF 2015

1. Mr. Joseph Lobo alias Jose Santan Lobo,
son of late Pedro Camilo Lobo,
major of age, married,
resident of Bairo Alto Guimaraes,
Panaji – Goa.

2. Mrs. Clara Lobo,
wife of Jose Lobo,
major of age, married,
resident of Bairo Alto Guimaraes,
Panaji – Goa.

... Applicants.

Versus

1. Mr. Vincent Francis Condillace,
major of age, married,
resident of T/3,
Kamat Complex, Tonca,
Caranzalem, Tiswadi Goa.

2. Mrs. Maria Condillace,
major of age, married,
wife of Vicent Francis Condillace,
resident of T/3,
Kamat Complex, Tonca,
Caranzalem, Tiswadi Goa.

... Respondents.

Mr A.D. Bhobe with Ms A. Fernandes and Ms A. Kuvelkar,
Advocates for the Applicants.

Mr Gaurish Agni with Mr Kishan Kavlekar, Advocates for
the Respondents.

CORAM: BHARAT P. DESHPANDE, J.
RESERVED ON: 12 January, 2023
PRONOUNCED ON: 19 January, 2023

JUDGMENT:

Applicants/original Defendants are challenging impugned order dated 16.01.2015 passed below Exh. 16 by the learned Civil Court thereby rejecting application under Order 7 Rule 11 CPC.

2. The matter was admitted on 30.09.2015 and interim stay in terms of prayer clause (b) was granted.

3. Heard learned Counsel Mr A.D. Bhobe appearing along with learned Counsel Ms A. Fernandes and Ms A. Kuvelkar for the Applicant and learned Counsel Mr Gaurish Agni appearing along with learned Counsel Mr Kishan Kavlekar for the Respondents.

4. Respondents filed civil suit i.e. Special Civil Suit No.11/2007 on 18.01.2007 thereby claiming following reliefs:-

“(a) That the plaintiffs suit be decreed declaring that the sale deed dated 11.8.94 which is registered in the office of Sub-Registrar of Ilhas, at Panaji under registration no. 1660, pages 25 to 51, Book No. I, Vol. 334 dated 25.8.94 is null, void and ordered to be cancelled from the office of Sub-Registrar of Ilhas, at Panaji for all legal purposes and also to restore the possession of the suit property held by the defendants illegally.

(b) That the defendants be ordered to pay to the Plaintiff the sum of Rs. 2,25,000/- which they have received from the deceased Francisco Luis Philip Jose do Piedade de Sa on the pretext that the Defendant

no. 1 would construct to him the Flat no. GF-2 in the proposed building to be constructed by the Defendants in the suit property with interest at the rate of 17% per annum from the date of receipt of the money till the date of payment.

(c) That a permanent injunction be granted restraining the defendants, their agents, servants, family members or any other person or persons acting on their behalf from developing, selling, transferring, alienating or creating any third party right over the suit property and/or interfering with the suit property in any manner whatsoever.

(d) That Temporary Injunction be granted in favour of the plaintiffs in terms of prayer (b) above.

(f) Any other relief which this Hon'ble Court deems fit and proper be granted in favour of the plaintiffs.”

5. Applicants/original Defendants No.1 and 2 appeared and filed their written statement and subsequently filed an application under Sections 9, 151 and Order 7 Rule 11 CPC vide Exh. 16 thereby claiming that the plaint does not disclose cause of action and that said suit is barred by law of limitation. Learned Trial Court vide its order dated 16.01.2015, rejected such application which is now challenged in the present revision application.

6. Mr Bhobe appearing for the Applicants would submit that from the averments made in the plaint, the suit is clearly barred by law of limitation as the main prayer is for declaration and therefore, Article 58 of Limitation Act stands attracted. He would submit that the prayer for declaration as styled in prayer clause (a) is the main relief and not ancillary relief and only if such relief is granted, the Plaintiff would be able to sustain other reliefs including the claim of

possession. He further submitted that the plaint as a whole does not disclose cause of action against the Defendants as there are no specific allegations in connection with fraud and when it was played or exercised. There is a distinction between non-existence of cause of action and failure to state about the particulars of cause of action. Existence of cause of action could be spelt out from bundle of facts disclosed in the plaint. From the reading of the plaint as a whole, it would clearly suggest that so called cause of action tried to be disclosed in the plaint is only imaginary as far as the year of 2005 is concerned and therefore, the plaint itself is barred by law of limitation. In this respect, Mr Bhobe placed reliance on the following decisions:-

- a) *Ajay Sohanlal Jhuria & Ors. vs. Durgaprasad Ramniwas Poddar & Anr.*¹,
- b) *Shri Capistrano Gomes & Anr. vs. State of Goa & Ors.*²,
- c) *Selwyn Agnelo Botelho vs. Norton D'Souza and Anr.*³,
and
- d) *Mudhit Madanlal Gupta, through His Power of Attorney Caetano Fernandes vs. Mazher Khan Farooqui & Anr.*⁴,

7. The learned Counsel Mr Agni appearing for Respondents would submit that there are specific allegations regarding fraud played by the Defendants and there is prayer for possession of the suit property which is an independent prayer. According to him, Article 66 of the

1 2002 (Supp.2) Bom.C.R. 132

2 CRA 16/2015

3 2016 SCC OnLine Bom 5017

4 2022 SCC OnLine Bom 7183

Limitation Act would attract wherein period of limitation is 12 years. Thus, according to him, suit is filed well within the limitation period. He would submit that observations of the learned Trial Court are therefore not required to be interfered in the revisional jurisdiction for the simple reason that the Trial Court already framed issues and issue with regard to the limitation is also framed putting burden on the Plaintiff to prove as to whether the suit is within limitation.

8. Mr Agni has placed reliance on the following decisions:-

- a) *Indira vs. Arumugam*⁵,
- b) *Suresh Bhalchandra Shetye (Dr.) vs. Anil Vasant Pednekar & Ors.*⁶,
- c) *Chhotanben and Anr. vs. Kiritbhai Jalkrushnabhai Thakkar & Ors.*⁷,
- d) *Shaukathussain Mohammed Patel vs. Khatunben Mohmmmedbhai Polara*⁸,
- e) *Urvashiben & Anr. vs. Krishnakant Manuprasad Trivedi*⁹,
- f) *Sopanrao and Anr. vs. Syed Mehmood and Ors.*¹⁰

9. The rival contentions fall for consideration of this Court.

10. It is well settled proposition of law that while considering application under Order 7 Rule 11 CPC, only the plaint and accompanying documents relied upon in the plaint could be looked into in order to find out whether it discloses cause of action or

5 1998 (1) SCC 614

6 2011 (1) Bom.C.R. 251

7 AIR 2018 SC 2447

8 (2019) 10 SCC 226

9 (2019) 13 SCC 372

10 AIR 2019 SC 3113

whether the suit, from the averments made in the plaint is barred by any law. Thus, it is necessary to look into pleadings as found mentioned in the plaint.

11. Respondents/Plaintiffs filed a suit for declaration and cancellation, restoration of possession, recovery of money and permanent injunction against the Defendants/Applicants.

12. In nutshell, it is the contention of Plaintiffs that there exists a property known as Casa de Moroda at Altinho, Panaji described in Land Registration Office No.2926 and enrolled in Taluka Revenue Office under Matriz No.525 which bears P.T. Sheet No.59 of Chalta No.166-A of City Survey, Panaji, having an area of 755 sq. mts. and bounded on the east by public road, on the west by part of property belonging to Shri Francisco Luis Philip Jose do Piedade de Sa and Shri Sebastiao Francisco Edise de Sa, on the north by access way and on the south by the property of Ricardo Rodrigues, hereinafter called as “the suit property”.

13. Plaintiffs further claimed that the suit property was originally belonging to Francisco Luis Philip Jose do Piedade de Sa and Shri Sebastiao Francisco Edise de Sa, both residing at Quitula, Aldona, Bardez, Goa. The suit property was allotted to these persons in equal shares by virtue of deed of family partition dated 28.10.1978 duly registered with the Sub-Registrar at Mapusa.

14. Said Sebastiao Francisco Edise de Sa died on 23.05.1997, whereas Francisco Luis Philip Jose do Piedade de Sa died on 04.05.2000 as bachelor. It is specific case of the Plaintiff that both

these persons executed a will dated 12.10.1999 in favour of Plaintiff and upon death of said two persons, the Plaintiff is entitled to the inheritance left over by them. Accordingly, in an Inventory Proceedings bearing No.329/2000, this property was allotted to the Plaintiffs vide order dated 16.08.2002. In the City Survey records, the name of Sebastiao Francisco Edise de Sa and his brother Francisco Luis Philip Jose do Piedade de Sa were recorded in Form 'D' of Chalta No.166-A and P.T. Sheet No.59.

15. It is further claimed by the Plaintiff that Defendant No.1 filed an application for mutation before the Inquiry Officer, City Survey Panaji with a prayer to transfer by mutation entry in his name the suit property. Such Mutation Case No.608/2003 was filed only on the basis of sale deed dated 11.08.1994 allegedly executed by deceased Francisco Luis Philip Jose do Piedade de Sa and his brother Sebastiao Francisco Edise de Sa and that too by playing fraud on them by the Defendant No.1. The Plaintiff further claimed that Defendant No.1 earlier entered into an agreement of sale and development dated 05.09.1992 with said Francisco and Sebastiao, which came to the knowledge of Plaintiffs for the first time when Defendant No.1 applied for mutation in the office of City Survey Panaji by making reference to such alleged agreement and the deed of sale dated 11.08.1994.

16. It is further claimed by the Plaintiffs that they objected to the mutation entries in Case No.608/2003 conducted before the City Survey office at Panaji. However, said officer without hearing and

passing speaking order allowed mutation entry in the name of Defendant No.1 vide order dated 30.06.2005.

17. It is then claimed by the Plaintiff that sale deed dated 11.08.1994 and the alleged deed of agreement are fraudulent documents and Defendant No.1 never complied with the conditions mentioned in the sale deed. No consideration passed in the said transaction.

18. Finally, the Plaintiffs claimed in para No.20 as under:-

“The cause of action to file present suit arose for the first time on or about 17.03.2003 when they received the notice from the Inquiry Officer City Survey Panaji and it again arose when the Inquiry Officer passed the order dated 30.06.2005 and the same is recurring day to day.”

19. Defendants after filing of the written statement, filed application under Order 7 Rule 11 CPC vide Exh. 16. In para 4 of the application, it is claimed that the cause of action mentioned in the plaint is not the actual cause of action and the suit is barred by law of limitation as according to the Plaintiff, the cause of action first accrued on 17.03.2003 whereas suit was filed on 18.01.2007 i.e. beyond period of three years as contemplated in Article 58 of the Limitation Act. Though the prayer clause in the plaint as quoted earlier shows that the main prayer is for declaration of the sale deed as null and void and the consequential prayer is for restoration of possession, the fact remains that the plaint itself discloses that the cause of action first accrued to the Plaintiff in the year 2003 itself. Limitation Act provide in Part III, suits relating to declarations. In the

present matter, since Plaintiffs are asking a declaratory relief thereby to declare the sale deed as null and void, Article 58 of the Limitation Act would stand attracted which provide that in order to obtain any other declaration, the period of limitation is three years when the right to sue first accrues.

20. The Plaintiff in the plaint itself discloses that right to sue first accrued to them on 17.03.2003 when they got notice from the Inquiry Officer of City Survey Panaji in the case of mutation filed by Defendant No.1 and accordingly came across the sale deed dated 11.08.1994.

21. Averment in para 20 as quoted earlier that cause of action again arose when the Inquiry Officer passed order dated 30.06.2005 and that the same is recurring day to day, is clearly incorrect for the simple reason that passing an order in mutation proceedings by the Inquiry Officer on 30.06.2005 thereby directing to include the name of Defendant No.1 in the survey records would by no stretch of imagination give any cause of action to the Plaintiffs for filing suit for declaration of a sale deed as null and void though executed in the year 1994. It is not the case of Plaintiffs that vide order dated 30.06.2005 passed by the Inquiry Officer, they came to know for the first time about the sale deed dated 11.08.1994.

22. It is again a settled proposition of law that once limitation starts to run, it never stops till the period of limitation is over. Therefore, any suit claiming declaratory relief is required to be filed within a period of three years from the time when the cause of action first accrues to the Plaintiff and not on any subsequent cause of

action. Even though there are subsequent causes of action, the period of limitation is not extended from such fresh causes of action.

23. In the present matter, the basic question is whether Article 58 or Article 66 of the Limitation Act will apply to the cause of action.

24. Article 66 of Limitation Act is in Part V which deals with suits relating to immovable properties. It further provides that the suit for possession of immovable property when the plaintiff has become entitled to possession by reason of any forfeiture or breach of conditions wherein the period of limitation is 12 years and the time from which period begins to run is when the forfeiture is incurred or the condition is broken. The plaint is silent about the conditions allegedly imposed in the sale deed and when such conditions were required to be fulfilled, though some averments are found in para no.11 of the plaint. It is specifically claimed that since such conditions were not fulfilled by the Defendant, he played fraud on the vendors of the Plaintiff. The averments regarding fraud are therefore, again found to be vague without any specific particulars.

25. The prayer clause as quoted earlier clearly goes to show that the predecessor-in-title of the Plaintiffs sold the suit property in favour of Defendant Nos.1 and 2 vide sale deed dated 11.08.1994. Plaintiffs got knowledge of such sale deed on 17.03.2003. Thus, unless such sale deed dated 11.08.1994 is declared as null and void, the Plaintiffs would not be entitled for possession of the suit property. Thus, the relief claimed in the suit is basically for declaration of the sale deed dated 11.08.1994 as null and void and consequential to it,

restoration of possession of suit property on the basis of will by which Plaintiff is claiming to have acquired right in it.

26. No doubt, there are allegations with regard to fraud played by the Defendants while executing such sale deed, however, the fact remains that the cause of action first accrued to the Plaintiffs as disclosed in the plaint is dated 17.03.2003. The mutation entries were effected in the name of Defendants. Admittedly, the Defendants are in possession of the suit property from the date of execution of sale deed i.e. from 11.08.1994. The Plaintiffs are claiming right over the suit property on the basis of will executed by the predecessor-in-title of the Plaintiffs, which is dated 12.10.1999 i.e. much after the sale deed dated 11.08.1994. In such circumstances, the so called relief claimed of restoration of possession is admittedly a consequential relief to the relief of declaration. Unless the sale deed is declared as null and void, the Plaintiffs cannot claim such possessory rights.

27. The learned Counsel Mr Bhobe while placing reliance in the case of *Ajay Sohanlal Jhuria* (supra) rightly invited attention of this Court to para Nos. 11 and 12 which reads thus:-

“11. As observed earlier, if it is a suit for declaration then the provisions of Article 58 will squarely apply. As per Article-58, suit for declaration should necessarily be filed within three years when the right to sue “first” accrues. This Article postulates that three years would commence from the right to sue “first” accrues. Going by the plaint, as well as this provision, it will not be possible to take the view so as to permit the plaintiffs to contend that it is because of the amendment and the stand taken by the defendants in September, 1996 that

the cause of action to institute the present suit for the relief of declaration has arisen. Whereas, the plaintiffs have clearly accepted on more than one occasion in the plaint that in the year 1968 to 1969 the defendants claimed that the defendant No. 1 was the absolute and exclusive owner of the said property. If this be so, then the cause of action for seeking the relief of declaration as is sought in the present suit first accrued in 1968 and the suit ought to have been filed within three years therefrom. No doubt, the defendant No. 1 had caused amended to the plaint filed by him in the year 1969 and admitted in the alternative that the trust is the owner of the suit property and also claimed consequential relief as beneficiary. Assuming that it is possible for the plaintiffs to contend that because of this change the defendants conceded that the owner of the suit property was the trust and claimed consequential relief as beneficiary and for which reason it was no longer necessary for the plaintiffs to pursue the remedy of declaration sought herein. But the fact remains that the plaintiffs have further alleged that on or about 18th August, 1980 the defendant No. 1 abandoned his claim of absolute owner and whereas accepted the trust as the owner of the trust property and confined his claim as being the beneficiary. However, according to the plaintiffs, once again on or about 14th April, 1982 defendant No. 1 changed his stand and claimed as co-lessee of the trust property in the alternative to his claim as the beneficiary under the said trust and maintained such claim till September, 1996. At least with this change of stand in April, 1982, it can be said that the cause of action to seek declaration as is sought in the present suit had arisen. To my mind, on careful examination the frame of the subject plaint, it will be seen that the present suit is not founded only on the development taken place in September, 1996 but the plaintiffs are relying on the inconsistent and contradictory stand taken by the defendants all throughout since 1968. This is evident from the contents of Paragraphs 25 and 26 where the plaintiffs

have relied upon the earlier averments in the plaint, which includes the event of 1968, to submit that defendant Nos. 1 and 2 have no right, title or interest and are not entitled to claim any right title or interest in the trust property as co-lessee and/or owners. The plaintiffs have further alleged that the claim of defendant Nos. 1 and 2 that the defendant No. 1 was the sole owner of the trust property is wholly false, frivolous and baseless which claim has been consciously, knowingly and willingly renounced and/or abandoned by defendant No. 1. Again in Paragraph 26, it is alleged that because of the contradictory and mutually destructive claims of defendants No. 1 and 2 de hors the said trust amounts to disowning and challenging the said trust. To my mind, therefore, the cause of action for instituting the suit for declaration that the defendants have ceased to be the beneficiaries in the first place arose in the year 1968 and, in any case, after presentation of the affidavit by the defendants in the year 1982 claiming to be co-lessees. There was no reason for the plaintiffs to wait thereafter because by that time the defendants had already taken contradictory and mutually destructive claims de hors the said trust which amounted to disowning and challenging the said trust. Moreover, it is alleged that the defendants also took over forcible possession of the suit property soon after the demise of Ram Niwas Poddar in 1970 and caused encroachment on the suit property. In this background, I have no hesitation to hold that since the plaintiffs have claimed relief of declaration against the defendants that they have ceased to be the beneficiaries under the said Declaration of Trust dated 1st April, 1951, such a suit would be governed by Article 58 and as the first cause of action arose more than 3 years prior to the institution of the present suit, this suit is clearly barred by limitation.

12. To counter this position the learned counsel for the plaintiffs has relied on the decision of the Division Bench of this Court reported in 1984 (2) Bombay Case Reporter page 50 in (Ghanshyamdas Vallabhdas

Gujrathi v. Brijraman Rasiklal) to contend that the relief of declaration though claimed was not the main relief and it was an ancillary relief to the relief of possession. I have already held that in the present case, it is not possible to take that view. In as much as, unless the declaration sought by the plaintiffs that the defendants have ceased to be the beneficiaries under the trust was to be granted, the plaintiffs cannot succeed in getting the relief of possession. In the case of *Ghanshyamdas (supra)*, the defendant by several letters had assured the plaintiff that he could take possession of the suit property out of Court at any time. That fact indicates that the defendant had no hostile animus and never asserted title hostile to the plaintiff. The Court has further observed in Paragraph 5 that possession of the defendant was never adverse to the plaintiff at least till 1975 when the plaintiff requested him to attorn the tenants to it and he failed to do so. The Court went on to observe that the suit was instituted in the year 1978, viz., well within 12 years from the day when the defendant failed to comply with the request of the plaintiff to attorn the tenants to it. In that context, this Court has held that the main relief was one of possession and not of declaration and for which reason Article 65 would apply because the suit was for possession on the basis of title. In the present case, however, the fact situation is entirely different. In this case, the defendants have not only challenged the trust but also title of the trust in respect of the suit property. Accordingly, this decision is of no avail to the plaintiffs.”

28. In that matter, the suit was filed for declaration that the defendants 1 and 2 ceased to be the beneficiaries under the declaration of trust and have no right, title or interest in the trust property and accordingly liable to quit, vacate and deliver vacant and peaceful possession to the plaintiff of the trust property. It was observed that though along with the claim of declaration, the

Plaintiffs claimed restoration of possession, and observed that the main prayer is for declaration and therefore Article 58 of the Limitation Act would attract. Unless such declaration is granted in favour of Plaintiffs, they were not entitled to claim restoration of possession. Such observations are applicable to the facts of the present matter. There is no material to deviate from the said observation and the findings in the case of *Ajay Sohanlal Jhuria*.

29. Second part of para no. 20 regarding so called cause of action dated 30.06.2005 is only imaginary as no fresh cause of action accrued to the Plaintiffs from 30.06.2005 when the Inquiry Officer passed an order thereby allowing mutation application in favour of Defendants. To my mind, such proceedings will not give any fresh cause of action to the Plaintiffs for seeking declaration when they got the knowledge of the sale deed on 17.03.2003 itself.

30. In the case of *Shri Capistrano Gomes* (supra), this Court observed in para No.17 as under:-

“17. The main relief as claimed in the suit is a declaration in favour of plaintiffs declaring the sale deed dated 15.05.2002 as null and void. The other reliefs are consequential reliefs to prayer clause (a). It is a well-settled proposition of law that limitation starts to run from the date of the cause of action accruing in favour of the plaintiffs and it never stops till the period as disclosed in the respective Articles of the Limitation Act, is over.”

31. In the case of *Mudhit Madanlal Gupta* (supra), a Division Bench of this Court observed in para No. 24 as under:-

“24. In Urvashiben & anr (supra), Mr. Kantak relying on this decision would contend that notice of refusal to perform is a mixed question of fact and law and the same cannot be gone into under Order VII Rule 11(d) of the CPC as the same would be required to be decided after leading evidence. This was not a case where the contract was terminated. The plaintiff had filed the suit in question, 25 years after execution of the contract by averring in the plaint that only when he could notice defendant's refusal of performance of contract, it was then he filed the suit within the prescribed limitation of 3 years. In such circumstances, the Supreme Court held that the application for rejection of plaint cannot be allowed. The Supreme Court observed that Article 54 of the Limitation Act, provided that when the date is fixed for performance, limitation is of three years from such date. However, if no such date is fixed, the period of three years is to be reckoned from the date when the plaintiff has notice of refusal. It was observed that when rejection of plaint is sought in an application filed under Order VII Rule 11 CPC, same is to be considered in the facts of each case looking at the averments made in the plaint for the purpose of adjudicating such application. If the suit for specific performance falling in the second limb of Article 54, period of three years is to be counted from the date when it had come to the notice of the plaintiff when performance is refused by the defendant. No doubt it is settled proposition of law that while deciding application under Order VII Rule 11 (d) CPC, only the contents of the plaint are required to be looked into, however, in the facts and circumstances of the present case by clever drafting of the plaint the appellant has avoided disclosure of termination of the MoU which otherwise would have ex facie brought about that the appellant's suit was barred by limitation. The Court is certainly entitled to look into such aspect in order to reject the plaint and avoid unnecessary adjudication. Thus the decision in Urvashiben will not assist the appellant.”

32. Relying upon the above propositions, one thing is clear that plaint specifically discloses that the right to sue first accrued to the Plaintiff on 17.03.2003. The main prayer as quoted earlier is for declaration of the sale deed dated 11.08.1994 as null and void. Thus, the period of limitation would start to run for filing of such suit for declaration on 17.03.2003. The period for claiming such declaration is three years from the date of accrual of first cause of action. Suit is admittedly filed on 18.06.2007. Thus, the suit for such declaration of the sale deed to be declared as null and void is clearly barred by law of limitation.

33. In the case of *Suresh Bhalchandra Shetye* (supra), as relied upon by the learned Counsel Mr Agni, the suit was filed for declaration of sale deed dated 19.01.2006 as well as sale deed dated 16.05.2006 as null and void and for permanent injunction. An application under Order 7 Rule 11 was filed by Defendant No.1 on the ground that plaint does not disclose cause of action and that the suit is barred by law of limitation. The plaint discloses that the cause of action arose on or about 20.12.2006 when the plaintiff came to know about the impugned sale deeds and the suit was filed on 19.11.2008. In para 14 of the judgment passed by learned Single Judge of this Court, it is observed that if the plaintiff is to be granted the relief of recovery of possession, the suit could be filed within a period of 12 years. It is one thing to say that whether such a relief can be granted or not after the evidence is led by the parties, but it is another thing to say that the plaint is to be rejected on the ground that the same is barred by law. In the suit which has been filed for

possession, as a consequence of declaration of the plaintiff's title, Article 58 will have no application.

34. The facts of the said case in the matter of *Suresh Bhalchandra Shetye* (supra) are quite different as suit for declaration was specifically filed within period of three years from the date of knowledge of execution of sale deeds. In that context, above observations were made. It was not the case that the declaratory relief was the main relief which was beyond period of limitation. Thus, such observations which are appearing in para 14 of the said decision cannot be applied to the matter in hand. Thus, decision in the case of *Suresh Bhalchandra Shetye* (supra) is certainly distinguishable and not supporting Respondents in the present matter.

35. In the case of *Chhotanben and Anr.* (supra), the appellants filed suit for declaration and permanent injunction in October 2013 against the Respondents. It was asserted that the appellants and defendant nos. 1 and 2 were in joint ownership and possession of an ancestral property inherited by them from their father. The said property was joint, undivided and jointly possessed as well as used and enjoyed by the plaintiffs and defendant nos. 1 and 2, after the demise of their father. It was further asserted that without the knowledge of plaintiffs, defendant nos. 1 and 2 transferred the suit property after forging signatures of the plaintiffs. The plaintiffs came to know about such sale deed dated 18.10.1996, they applied for the certified copy of the registered sale deed and on inquiry, it was observed that such document was fraudulently executed by putting

thumb impression of the plaintiffs and the witnesses by impersonation. The plaintiffs stated that they filed a suit for declaration and permanent injunction. The application filed by Defendant No.1 for rejection of plaint was rejected on the ground that the factum of suit being barred by limitation was a triable issue. However, in appeal, the High Court reversed such findings and allowed the application thereby rejecting the plaint. The matter was carried to the Supreme Court wherein it is observed in para no. 11 that the High Court committed error in reversing the view taken by the Trial Court that the factum of suit being barred by law of limitation was a triable issue in the fact situation of that case. It was further observed that the plaintiffs have asserted that till 2013 they had no knowledge whatsoever about execution of registered sale deed concerning their ancestral property. They further denied their thumb impressions on the registered sale deed and alleged forgery and impersonation. In such context of totality of averments in the plaint, the issue was a triable issue, and therefore, was not required to be dismissed under Order 7 Rule 11 CPC. The Supreme Court then observed in para 12 as under:-

“12. What is relevant for answering the matter in issue in the context of the application under Order VII Rule 11(d), is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order VII Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18th October, 1996. The limitation to challenge the registered sale deed ordinarily would start

running from the date on which the sale deed was registered. However, the specific case of the appellants (plaintiffs) is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers - original defendant Nos.1 & 2, in favour of Jaikrishnabhai Prabhudas Thakkar or defendant Nos.3 to 6. They acquired that knowledge on 26.12.2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original defendant Nos.1 & 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (1/2) portion of the land so designated towards their share. However, when they realized that the original defendant Nos.1 & 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the Trial Court opined that it was a triable issue and declined to accept the application filed by respondent No.1 (defendant No.5) for rejection of the plaint under Order VII Rule 11(d). That view commends to us.”

36. In the above context, it is clear that above observations in the case of *Chhotanben* (supra) are not at all applicable to the facts and circumstances of this case. The matter in hand clearly goes to show knowledge of the Plaintiffs about execution of sale deed on 17.03.2003 which is found in para 20 of the plaint. Thus, the suit for declaration ought to have been filed within a period of three years from such knowledge being the accrual of cause of action. Hence,

observations in the case of *Chhotanben* (supra) are not applicable to the facts and circumstances of the matter in hand.

37. In the case of *Urvashiben* (supra), a suit was filed for specific performance of agreement to sell in which an application was filed by the defendant under Order 7 Rule 11 CPC. In that context, the Supreme Court observed that in a suit for specific performance of contract for sale of immovable property and more specifically when the time is not essence of contract, limitation starts when the plaintiff has noticed that performance is refused by the defendant, as provided in the second limb of Article 54 of Limitation Act. The matter in hand is certainly not based on any agreement for sale of immovable property claiming specific performance of such contract. Therefore, this decision is of no help to the Respondents.

38. In the case of *Sopanrao* (supra), a suit was filed by the Plaintiffs claiming that they be declared as Inamdars of the lands and secondly, plaintiffs be put in possession of the suit lands. The defendants contested the said suit, including that the suit was filed beyond the period of limitation. The Trial Court dismissed the suit holding that the suit was not filed within the period of limitation and that it was bad for non-joinder of necessary parties. Thirdly, the suit was dismissed on the ground that the plaintiffs failed to prove that the suit land was Inam land or the plaintiffs are Inamdars. The plaintiffs challenged the said decision before the District Court. The appeal was allowed thereby decreeing the suit. Against the said appeal, aggrieved parties preferred two second appeals before the High Court. The High Court modified the decree of the District Court

to a limited extent stating that the plaintiffs and defendant no.12 were the descendants of Mutawalis and Inamdars. Thus, the matter was carried to the Supreme Court. In para 8, the Supreme Court observed that as far as issue of title is concerned, a finding of fact arrived at by the District Judge and confirmed by the High Court is not required to be disturbed by the Supreme Court. Further, in para 9, argument was raised that the suit was not filed within limitation and while rejecting such objection, the Supreme Court observed that possession of the said land was handed over to the trust only in the year 1978 and the suit was filed in the year 1987 for possession. In that context, it was observed that it was culled out from the plaint that the main prayer in the suit is not only for declaration but for possession of the suit land and as such, limitation for filing of the suit for possession on the basis of title is 12 years.

39. The facts in the case of *Sopanrao* (supra) are quite distinct and distinguishable as the main suit was for possession on the basis of title. Therefore, a suit filed within 12 years was considered as within limitation. In the present case, the suit is mainly on the basis of declaration. The Plaintiffs claimed that they got the right in the suit land on the basis of a will dated 12.10.1999, however, it is also clear from the averments in the plaint that the predecessor-in-title of the Plaintiffs sold the suit land by a registered sale deed dated 11.08.1994. It is, therefore, clear that much before will dated 12.10.1999, the predecessor-in-title of the Plaintiffs sold the suit land in favour of Defendants. Thus, present suit is mainly for declaration of the sale deed dated 11.08.1994 as null and void. Only if such

relief is granted, then the Plaintiffs, as a consequence of it would be entitled to possession of the suit land subject to proving will dated 12.10.1999. It is, therefore, clear that the suit is not based on title but on the basis of a will dated 12.10.1999. In these circumstances, when the main prayer is for declaration and the consequence of it is restoration of possession, the suit ought to have been filed within a period of three years from the date when the cause of action first accrued to the Plaintiffs as stated in para 20 of the plaint.

40. In sum and substance, suit filed beyond three years for relief of declaration is clearly barred by law of limitation. Article 58 of the Limitation Act would attract in the present matter and not Article 66 as tried to be projected.

41. The learned Trial Court erred in not considering the pleadings in proper perspective and thereby arrived at incorrect findings while rejecting application at Exh.16.

42. From the above observations, it is crystal clear that suit filed for declaration is barred by law of limitation. The impugned order dated 16.01.2015 below Exh.16, therefore, needs to be quashed and set aside and consequently, the application at Exh.16 is required to be allowed, thereby rejecting the plaint being barred by law of limitation.

43. The revision is, therefore, allowed as per prayer clause (a). The impugned order below Exh.16 dated 16.01.2015 is hereby quashed and set aside. The application at Exh.16 stands allowed. The plaint is

Special Civil Suit No. 11/2007 stands rejected as barred by law of limitation. Parties shall bear their own cost.

BHARAT P. DESHPANDE, J.

JOSE
FRANCISCO
DSOUZA

Digitally signed by JOSE
FRANCISCO DSOUZA
Date: 2023.01.20
10:49:41 +05'30'