

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.328 OF 2023

Sandeep Rajendra Bandgar & Ors. Applicants

Vs.

Annasaheb Kallappa Upadhye & Ors. Respondents

Mr. Kuldeep U. Nikam for the Applicants.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 7 JULY 2023.

P. C.

1. Heard.

2. The challenge in the application is to the order dated 30/9/2023 passed in RCS No.107/2021 rejecting the application filed under Order 7 Rule 11 (a) and (d) of C.P.C.

3. The facts of the case are that present respondent No.1 - original plaintiff preferred RCS No.107/2021 against the applicants and other respondents praying for relief of declaration and injunction. As per the averments in the plaint, the agricultural land being Gat No.188 was owned by Balu Kupade. The land was

sold in 1980 to Prabhakar Shete, who subdivided the land into 82 plots and obtained permission of planning authority. Thereafter Prabhakar Shete applied for NA permission and obtained approval for 82 non agricultural residential plot. Subsequently, predecessors in title of Defendant No.3, defendant No.3 and defendant Nos.4 to 13 bought the land on 19/12/1988 and applied for final measurement which was done. Defendant No.3 to 10 granted to one Dastgir Attar, and defendant No.11 and defendant No.13 granted to defendant No.14 power of attorney for sale of 82 plots. The predecessor in title of plaintiff i.e. defendant No.24, through guardian, entered into agreement of sale of plot No.11. However the plot No.11 was renumbered as plot No.52 and in 2009 plaintiff purchased plot No.11 and took possession. As such the plot is numbered as both plot No.11 and plot No.52 which is mentioned in the Sale Deed executed by defendant No.24 in favour of plaintiffs. Accordingly application for mutation was made, which was rejected, about which plaintiff had no knowledge. Upon acquiring knowledge Revision Application was preferred. In spite of sale of plot to original plaintiff power of attorney was given to defendant No.14 on 28/6/2012 for sale of plot No.52 along

with other plots, pursuant to which plot No.52 was sold to defendant No.1 on 2/1/2019 about which plaintiff became aware in 2019-2020.

4. The cause of action as per the plaint arose when the plaintiff came to know on 2/1/2019 that defendant No.14 who was the power of attorney holder had executed the sale deed in favour of defendant no.1 in respect of plot No.11 which was stated to be renumbered as plot 52. Plaintiff sought declaration that the original defendants did not have any right to transact in respect of original plot 11 and as such sought declaration that POA dated 28/6/2012 and sale deed dated 2/1/2019 are null and void.

5. In these proceedings, application came to be filed by the petitioner under section 7 Rule 11 (a) and (d) of C.P.C. claiming that there is no cause of action disclosed in the plaint inasmuch the suit proceedings is instituted on basis of Sale Deed of 1989 and 1992 which were not executed by applicants. It was contended that possession was not given to original plaintiff and after sanction of new layout plan nature and existence of plots has

changed. As regards limitation, it is stated that the revenue records as well as sanction of layout were within knowledge of the petitioner since the year 2013-2016. The said application has been rejected by the trial Court giving rise to the present petition.

6. Heard Mr. Kuldeep Nikam for the petitioner.

7. Learned counsel for the petitioner has taken this Court through the averments in the plaint as well as the proceedings in RTS Appeal No.192/2016 to contend that plaintiff had acquired knowledge about the sale Deed of the transaction which has taken place in respect of said plot in the year 2016 itself and as such the proceedings which are instituted in the year 2021 are barred by the law of limitation. He would urge that averment in the plaint as regards cause of action in respect of Plot No.52 does not disclose cause of action.

8. Considered the submissions.

9. The trial Court after considering the pleadings has

taken into consideration the provisions of Article 58 and 59 of Limitation Act and held that the suit being filed within a period of 3 years is not barred by limitation.

10. It is not disputed that by suit in question, the plaintiffs seeks declaration as regards the sale Deed which has been executed in the year 2019 by defendant nos. 3 to 13 and defendant Nos.10 to 15 in faovur of defendant No.1. The declaration sought is that the sale Deeds which are executed on the basis of power of attorney are illegal and do not confer any title on defendant no.1 Relief sought are also in respect of sale Deeds. The facts, which are indicated above forming part of the plaint discloses cause of action inasmuch as by reason of subsequent transfers which have taken place in the year 2019, the rights of the plaintiff in the suit plot is affected. The plaintiff has come with a specific case that the subsequent sale deeds came to his knowledge in the month of February 2020. It is settled that for the purpose of consideration of application under Order 7 Rule 11, it is only averment in the plaint which has to be taken into consideration. Averment in the plaint as indicated above discloses the cause for instituting the proceedings.

Further declaration as regards sale deeds which are executed in the year 2019 is within the period of limitation of 3 years.

11. In view of the above, there is no infirmity in the order passed by the trial Court. The petition stands dismissed.

SHARMILA U. DESHMUKH, J.