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

CIVIL REVISION APPLICATION NO.143 OF 2020

Shivaji Babanrao Khedekar ... Applicant
V/s.
Deepak Rajkumar Panchmukh & Ors. ... Respondents

Mr. Sachin R. Pawar, for applicant.

Mr. Sidheshwar Biradar, for respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 5, 2023

P.C.:

1. This is an application under Section 115 of the Code of Civil Procedure, 1908 (for short 'CPC') challenging order dated 9 January 2020 passed by the 16th Joint Civil Judge, Senior Division, Pune rejecting application under Order 7, Rule 11(d) of CPC.

2. Respondent No.1 filed Special Civil Suit No.374 of 2019 seeking a declaration that sale deed dated 12 January 2011, confirmation deed dated 12 March 2012 and 3 May 2012 be declared as null and void as the documents were obtained by fraud. Consequential injunction not to create third party rights and not to disturb possession of suit property and damages is also sought.

3. According to plaintiff on 7 September 2007 an agreement to

sale was executed in favour of defendant No.1 for total consideration of Rs.17,87,500/- out of which defendant No.1 paid to plaintiff and defendant Nos.2 to 10 Rs.50,000/- earnest amount. According to the plaintiff neither plaintiff nor defendant Nos.2 to 10 had read the contents of agreement to sale and the document was obtained by fraud.

4. Moreover, another agreement to sale dated 13 December 2007 executed between plaintiff, defendant Nos.2 to 10 and defendant No.1. The said document was executed by fraud.

5. According to the plaintiff by virtue of proceeding of Regular Civil Suit No.234 of 2018 the plaintiff got knowledge of sale deed dated 3 May 2012 and confirmation deed dated 12 March 2012. He, therefore, filed suit on 11 March 2019 seeking aforesaid reliefs.

6. The defendant No.1 filed an application under Order 7, Rule 11(d) of CPC for dismissal of suit on the ground of limitation.

7. The Trial Court rejected the application holding that the documents in question were executed in 2011 and 2012. The plaintiff got knowledge of the documents only in 2018; therefore, suit is within the limitation.

8. Learned Advocate for the applicant submitted that the confirmation deed dated 12 March 2012 is registered document signed by the plaintiff. The said document refers to sale deed dated 12 January 2011. The document dated 3 May 2012 is a confirmation deed executed by defendant Nos.2 to 6. The plaintiff is not concerned with the confirmation deed dated 3 May 2012.

According to him, therefore, suit is governed by Article 59 of Limitation Act, 1963. The facts entitled to plaintiff to get declaration as prayed became known to the plaintiff on the date of execution of confirmation deed dated 12 March 2012 and therefore, the suit filed on 11 March 2019 is barred by limitation.

9. Learned Advocate for the respondent submitted that considering averments in the plaint, the question of limitation is mixed question of law and fact for consideration application under Order 7, Rule 11(d) of CPC. The averments of the plaint has itself stands needs to be consideration. The plaintiff has stated in the plaint that he got knowledge of fraudulent execution of sale deed and confirmation deed only when the suit was filed in the year 2018. Therefore, the Trial Court has rightly rejected application for dismissal of suit. In support of his contention, he relied on the judgments i.e. **P. V. Guru Raj Reddy Versus P. Neeradha Reddy** reported in (2015) 8 SCC 331, **Srihari Hanumandas Totala Versus Hemant Vithal Kamat** reported in (2021) 9 SCC 99 and **Wilson Pereira Carvalho Versus Nicolau Fernandes** reported in 2019 (2) Mh.L.J. 438.

10. I have heard learned Advocate for both the parties.

11. On scrutiny of material on record including plaint and documents annexed along with plaint, following factual scenario emerges:

- i) Defendant Nos.2 to 10 executed sale deed in favour of defendant No.1 on 12 January 2011.
- ii) The plaintiff executed confirmation deed of sale deed

dated 12 January 2011 on 12 March 2012.

iii) Document dated 3 May 2012 was executed by defendant Nos.2 to 6 which furnishes no cause of action for the plaintiff as the said document was confirmation deed of sale deed dated 12 January 2011 executed by defendant nos.2 to 6.

iv) Prayer clauses 5 to 7 are consequential prayers of prayer clauses 2 to 4.

12. On consideration the averments in the plaint and prayers, in my opinion, Article 59 of the Limitation Act, 1963 governs the suit; Article 59 of Limitation Act, 1963 reads as under:

“Article 59.– To cancel or set aside an instrument or decree or for the rescission of a contract. (Period of limitation is three years.) When the facts entitling the plaintiff to have the instrument or the contract rescinded first become known to him.

13. The questions are arises for consideration is as to when the facts entitling plaintiff to have sale deed dated 12 March 2012 and confirmation deed dated 12 March 2012 came to the knowledge of the plaintiff. From the averments in the plaint and documents annexed with the plaint, it appears that confirmation deed dated 12 March 2012 was signed by the plaintiff. The said document *refers to* sale deed dated 12 January 2011. Therefore, fact of execution of registered confirmation deed was within the knowledge of plaintiff on *12 March 2012* itself.

14. The averments of fraud made in paragraphs 4, 8 and 18 in the plaint do not indicate that the fraud was discovered by the plaintiff in the year 2018. Merely saying that the plaintiff discovered fraud in the year 2018 is of no use to the plaintiff in absence of giving details of fraud or facts which lead to discovery of fraud can be accepted only if fraud pleaded is of such nature that the plaintiff discovered fraud in the year 2018. In absence of giving details of fraud, it is not open for the plaintiff to contend that he discovered fraud in execution of registered document only in the year 2018. Therefore, in my opinion, the limitation seeking declaration of document of sale deed and confirmation deed executed in the year 2011 and 2012 would start on 12 March 2012. The suit filed on 11 March 2019 is beyond period of three years and is barred by limitation.

15. In so far as judgments relied by the respondent are concerned, there cannot be dispute about proposition of law laid down by the Apex Court. It cannot be disputed that ordinarily question of limitation is mixed question of law and fact. However, in the facts of the present case, considering the relief claimed, it appears that the plaintiff was party to confirmation deed which referred sale deed of 2011. The question of limitation is true issue of mixed question of law and fact; therefore, from the averments of the plaint and documents annexed along with the plaint, it appears that the plaintiff had knowledge of execution of document in the year 2012 itself. Hence, judgments relief upon by the respondent are of no help to the respondent. I, therefore, pass following order:

a) The impugned order dated 9 January 2020 passed by the 16th Joint Civil Judge, Senior Division, Pune in Special Civil Suit No.374 of 2019 is quashed and set aside.

b) The application below Exhibit 18 in Special Civil Suit No.374 of 2019 is allowed.

16. The civil revision application stands disposed of. No costs.

(AMIT BORKAR, J.)

(Note:- This order is modified as per order dated 11 October 2023. Corrections in paragraph 13 are shown italicize.)