

VRJ

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

CIVIL REVISION APPLICATION NO.338 OF 2023

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Manojkunj Cooperative Housing Society
Ltd.

... Applicant

V/s.

Vidya Ramesh Kantabet & Ors.

... Respondents

Mr. S. C. Wakankar for the applicant.

Mr. Abhishek Matkar for respondent Nos.1 and 2.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 4, 2023

P.C.:

1. The applicant is original defendant No.1 in a suit filed by respondent No.1 seeking declaration that sale deed dated 11th February 2014 be declared as illegal, null and void and not binding upon the plaintiffs. Further declaration is sought with the applicant-society has no right to encroach upon land owned by the plaintiffs i.e. 20 feet from existing compound wall of building between the plaintiffs' bungalow and the defendant society without proper demarcation as per development agreement dated 3rd May 1989.
2. In such a suit, defendant No.1 filed an application under Order 7 Rule 11 Clauses (a) and (d) of the Civil Procedure Code, 1908 on the ground that the suit does not disclose cause of action

and it is barred by law of limitation. The Trial Court, by the impugned order, rejected the application. Hence, the defendants have filed present revision application.

3. On perusal of the plaint and the documents annexed thereto, it appears that in relation to prayer clause (a), the declaration of sale deed dated 11th February 2014 is sought in the year 2022. However, in relation to prayer clause (b), the plaintiff in paragraph 8 has pleaded facts which according to the plaintiff enable him to claim relief. According to the plaintiff, he apprehend encroachments of defendant No.1-society between open space of his bungalow and the building where defendant No.1 is situated. According to the plaintiff, unless demarcation is made as per the development agreement dated 3rd May 1989, defendant No.1 is not entitled to encroach over the property.

4. On meaningful scrutiny of the plaint, it appears that prayer clause (b) is not a consequential prayer of prayer clause (a). Assuming for the sake of argument that prayer clause (a) is barred by limitation, however, in view of judgment of the Apex Court in the case of **Sopan Sukhdeo Sable and Ors. vs. Assistant Charity Commissioner and Ors.** reported in (2004) 3 SCC 137 observed that part of the plaint cannot be rejected under Order 7 Rule 11 of the Civil Procedure Code, 1908. Therefore, in my opinion, the exercise of discretion by the Trial Court cannot be faulted as the order passed by the Trial Court discloses no error of jurisdiction.

5. Hence, the revision application is rejected. No costs.

(AMIT BORKAR, J.)