



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 651 OF 2016

Shri Nana Ramchandra ThakarApplicant

Vs.

Shri Namdev Shripati Hingade and OthersRespondents

Mr. Uday B. Nighot, Advocate for the Applicant.

None for the Respondent.

CORAM : GAURI GODSE, J.

DATE : 4th SEPTEMBER, 2023

P.C.

1. This Civil Revision Application is filed by defendant no. 1 to challenge the order dismissing his application for rejection of the plaint under Order VII, Rule 11 of the Civil Procedure Code.

2. The contention of the applicant is that the suit is barred by limitation as the respondent/plaintiff had already filed an RTS proceeding on 26th May 1994. Referring to the pleadings in paragraphs 4 and 5 of the plaint, where the reference is made to the revenue entries with respect to the suit properties, he further referred to a copy of the RTS Appeal filed by

the plaintiff on 26th May 1994. He submitted that the date of filing of the said proceeding would show that the cause of action, as pleaded by the plaintiff for contending that the suit is within limitation, is false, and it would show that the suit is barred by limitation. Hence, he submitted that the suit must be rejected as barred by law of limitation under clause (d) of Rule 11 of Order VII of CPC.

3. Perused the papers. The plaintiff has, in paragraph 9 of the plaint, pleaded the cause of action by contending that on 2nd March 2015, the possession of the plaintiff was disturbed by the defendant, and hence, the suit was filed for declaration. A perusal of the plaint shows that the cause of action is pleaded explicitly for, contending that the suit is within limitation. On a plain reading of the plaint, it is not possible to hold that the suit is barred by limitation. So far as the contention raised by the appellant that the suit is barred by limitation is concerned, is a mixed question of law and fact, for which the parties will have to lead evidence. The copy of the RTS Appeal relied upon by the defendant is not part of the pleading and/or relied on documents annexed by the plaintiff along with the suit.

4. Hence, when deciding the application under Order VII Rule 11 of the CPC, the documents tendered on behalf of the defendant cannot be looked into for rejecting the plaint as barred by limitation. The contention raised on behalf of the applicant necessarily requires evidence, and hence,

the objection can be made subject matter of regular issues that would be framed in the suit.

5. For the reasons stated above, I do not find any merit in the application filed by the applicant for rejection of the plaint as barred by law of limitation. There is no infirmity or illegality in the reasons recorded in the impugned order.

6. With the aforesaid observations, CRA is dismissed. Needless to record that it will always be open to the applicant to raise the ground of limitation when framing regular issues under Order XIV of the CPC.

[GAURI GODSE, J.]