

AGK

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

CIVIL REVISION APPLICATION NO.708 OF 2023

ATUL
GANESH
KULKARNI
Digitally signed by
ATUL GANESH
KULKARNI
Date: 2023.12.12
15:06:20 +0530

Manisha Madhukar Powar & Ors.

... Applicants

V/s.

Rajendra Bajirao Sankpal & Ors.

... Respondents

Mr. Rakesh Patil for the applicants.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 12, 2023

P.C.:

- 1.** The applicants are original defendant Nos.6a to 6c who filed application under Order 7 Rule 11 of the Code of Civil Procedure, 1908.
- 2.** Respondent No.1 is original plaintiff who filed Regular Civil Suit No.169 of 2023 seeking relief of partition, declaration that the sale deed executed in the year 1983 is not binding on the share of the plaintiff and for recovery of compensation of amount. Relief of injunction against defendant Nos.6a and 6b not to create third party rights in relation to the suit property was also sought.
- 3.** In the said suit, defendant No.6 filed an application under Order 7 Rule 11(a) to (d) of the Code of Civil Procedure, 1908 contending that the Civil Court has no jurisdiction to consider the issue covered by Section 3(h)(iv) of the National Highways Act,

1956. According to the defendants, prayer clause (c) is in relation to the sale deed executed in the year 1983 and, therefore, in view of Article 58 of the Limitation Act, 1963, the suit is barred by limitation.

4. On perusal of the plaint, it appears that the plaintiff has made averments in the suit that the suit property is their ancestral property. The sale deed executed by the plaintiff's predecessor is not binding on the plaintiff.

5. The respondent No.1 has claimed four reliefs in the suit. The objection raised by defendant No.6 is in relation to prayer clauses (c) and (d). Assuming that the objection raised by defendant No.6 is correct, prayer clause (b) still survives for consideration of the Civil Court.

6. The Apex Court in **Sopan Sukhdeo Sable & Ors. v. Assistant Charity Commissioner** reported in (2004) 3 SCC 137 has held that the Court cannot reject part of the claim. Therefore, the Trial Court was justified in rejecting the application under Order 7 Rule 11 of the Code of Civil Procedure, 1908.

7. The civil revision application is dismissed. No costs.

(AMIT BORKAR, J.)