

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

CIVIL REVISION APPLICATION NO. 7 OF 2023

Sunil Mahadev Kadam & Ors.

..Applicant

Versus

Sayajiraje Sadashiv Kadam & Ors.

..Respondents

Mr. Rahul P. Walvekar for Applicant.

Mr. N. B. Patil, A.G.P. for Respondent Nos.20 and 20a to 20f.

CORAM : SARANG V. KOTWAL, J.

DATE : 3 APRIL 2023

PC :

1. The Petitioners have challenged the order dated 21/06/2019 passed by Joint Civil Judge, S.D., Kolhapur, below Exhibit-111 in R.C.S.No.671 of 2018. The Petitioners are the original Defendant Nos.6 to 8. The Respondent No.1 is the original Plaintiff. For the sake of convenience, the parties are referred to by their original status in the trial Court.

2. The Plaintiff had filed the suit against various Respondents including the present Petitioners, basically for

VINOD
BHASKAR
GOKHALE

Digitally
signed by
VINOD
BHASKAR
GOKHALE
Date:
2023.04.05
11:20:53
+0530

Gokhale

partition of the suit property. That was his main prayer. The other prayers were for declaration regarding revenue entries, for preemption of right to purchase the property etc.

3. The Petitioners had filed Exhibit-111 under O.7, Rule 11(a) and 11(d) of the C.P.C. for rejection of the plaint, on the ground that, there was no cause of action and the Plaintiff had no authority to file the suit. Learned counsel for the Petitioners submitted that the plaint was cleverly drafted to give it appearance that it was filed within limitation. Learned counsel relied on the Judgment of the Hon'ble Supreme Court in the case of ***K. Akbar Ali Versus K. Umar Khan and Others***¹. On the other hand, the Plaintiff had submitted before the Trial Court that the suit was for partition of an ancestral property and it was within limitation.

4. I have considered these submissions and I have perused the impugned order, as well as, the plaint. The learned Trial Judge has rejected the Petitioners' application for rejection of the plaint by observing that, it was necessary to go through the entire plaint. The pleadings need to be constructed liberally and the approach

1 2021 SCC OnLine SC 238

should not be adopted to defeat the justice on hair-splitting technicalities. Learned trial Judge observed that, it was clear that the Plaintiff had approached the Court with a case that the suit property was ancestral property and had sought partition. Therefore, if the entire plaint is taken into consideration, the basic fact that the property remains a joint Hindu Family property unless it was partitioned by metes and bounds. It was observed that the right of partition was a continuous right and, therefore, it could not be said that the plaint did not disclose the cause of action. It was further observed that the suit for partition, injunction or alienation and for right of preemption on the suit property and recovery of sugarcane amount were maintainable in the Court. It was not necessary that the Plaintiff must succeed in all the prayers claimed. It was further observed that, plea of limitation raised by the Defendants was a mixed question of law and facts. Bases on these observations, the application made by the Petitioners was rejected.

5. As far as reference made by learned counsel for the Petitioners in the case of *K. Akbar Ali (supra)* is concerned, it was

regarding drafting of the plaint. If it was seen to be devious and clever then the Court had inherent power to see that frivolous and vexatious litigation were not allowed to consume the time of the Court. In the present case, the situation is completely different. The Plaintiff is seeking partition of the suit property which he claimed to be an ancestral property. There is no question of clever drafting. The pleadings in the plaint are clear enough. Learned Trial Judge has rightly observed that said prayer is maintainable. Reading of the plaint also shows that the Plaintiff had specifically pleaded in their plaint that, it was a joint family property and he was seeking partition of the property. As far as, limitation point is concerned, learned Judge has rightly observed that, a plea of limitation was mixed question of law and facts. The plaint nowhere discloses that partition was effected prior to filing of the suit. Therefore, the Plaintiff had every right to approach the Court for partition of that property. Learned Judge is also right in observing that the limitation was a mixed question of law and facts. This can be decided during conduct of the suit. The main prayer is partition of the suit property, for which the suit is

maintainable. Therefore, I do not see any infirmity in the order passed by the Trial Court.

6. Consequently, the Writ Petition is dismissed.

(SARANG V. KOTWAL, J.)