

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH AT NAGPUR**

CIVIL REVISION APPLICATION NO. 111 OF 2022

Shri Dinesh S/o. Jagannath Adole,
Aged about 45 years, Occ. Business,
R/o. Plot Nos. 14 and 15,
Vyankatesh Society, Bharatwada,
Pardi, Nagpur.

... **Applicant**

.. **Versus** ..

Shri Shankarrao S/o. Dashrathrao Nimbalkar,
Aged about 73 years, Occ. Nil,
R/o. Plot No. 129, Naik Nagar, Mahatma Fule
Housing Society, Manewada Road,
Nagpur.

... **Respondent**

Shri S.N.Bhattad, Advocate for applicant.
Ms. Seema P. Dhotre, Advocate for respondent (Appointed).

CORAM	: SMT. M.S. JAWALKAR, J.
RESERVED ON	: 15/03/2023
PRONOUNCED ON	: 10/04/2023

JUDGMENT

Heard finally at the stage of admission with the
consent of both the parties.

2. The present Civil Revision Application is filed by the applicant being aggrieved by the impugned order dated 11/03/2022 passed below Exh. 11 in Reg. Civil Suit No. 73/2018 by learned Civil Judge, Junior Division, Kalmeshwar, thereby rejecting the application filed by the applicant for dismissal of suit under Order VII, Rule 11(d) of the Code of Civil Procedure, 1908.

3. The facts giving rise to file this application are as under:-

The issue in dispute in the present proceedings is land bearing Survey No. 5(1) & 47 situated at Village Chichbhuvan, P.H. No. 23, Tahsil Kalmeshwar, District Nagpur. The said land was purchased by the applicant from the respondent by executing a registered sale deed dated 09/02/2009 vide registration No. 224/2009.

4. After execution of sale deed, there was a dispute between the family members of the respondent/non-applicant and to get the same cleared, the non-applicant filed a suit bearing RCS No. 49/2009 before learned Civil Judge, Junior

Division at Kalmeshwar for partition and separate possession of the joint family property. In the said suit, the non-applicant had joined the applicant as party defendant no. 52. Thereafter, the applicant was transposed as plaintiff no. 2 in the said suit. In para no. 16 of the plaint, the non-applicant has admitted that he has already sold his undivided share in property to the applicant vide sale deed dated 09/02/2009.

5. During the pendency of said suit, there was some misunderstanding between the counsel appearing for the parties. Hence, the counsel had issued legal notice to the applicant as well as the respondent thereby demanding huge fees from them so also abused the applicant. The non-applicant miffed with the said notice and false allegations, filed Reg. Civil Suit No. 73/2018 before learned Civil Judge, Junior Division at Kalmeshwar for cancellation of sale deed dated 09/02/2009 alleging that, for the first time, the non-applicant had got knowledge of the said sale deed on 14/02/2016, when he received notice from his counsel and further when he had filed police complaint on 05/03/2016.

6. After receipt of suit summons, the applicant filed an application for dismissal of suit under Order VII, Rule 11(d) of C.P.C., 1908 alleging that the suit is barred by limitation and in terms of Article 58 and 59 of the Limitation Act, as the period of challenge is for 3 years, the said suit filed beyond the said period, is liable to be dismissed in the interest of justice.

7. The said application was rejected by the learned Trial Court by observing that the issue of limitation is a mixed question of fact and law and therefore, the said application cannot be considered and accordingly, vide order dated 11/03/2022 rejected the said application. The said order is the subject matter of challenge in the present Civil Revision Application.

8. It is the contention of the learned Counsel for the applicant that under Article 58 and 59 of the Limitation Act, period of 3 years is provided to challenge the execution of any document. The non-applicant has full knowledge of the execution of Sale Deed and the same can be also seen from the pleadings made in the suit for partition, however, inspite of

having knowledge, the non-applicant has filed suit in the year 2018, challenging the said sale deed, which is clearly barred by limitation. The Trial Court ought to have seen that mere receipt of legal notice by counsel for payment of his fees and further by merely filing police complaint, fresh cause of action can't be said to be arose and on this ground, learned Trial Court ought to have allowed the application and dismissed the suit. The learned Trial Court erred in coming to conclusion that the issue of limitation is a matter of trial, when the facts are clearly established from the documents which are part of Court record, the said application ought not to have been dismissed, hence, the said order needs to be quashed and set aside by dismissing the suit in the interest of justice.

9. The learned counsel for the applicant relied on the citation in the case of *Khatri Hotels Private Limited and anr. Vs. Union of India and anr.* reported *in 2011(9) SCC 126*.

10. On the contrary, it is the contention of the respondent/ non-applicant that the respondent has filed the above stated civil suit against the present applicant as he had

fraudulently executed the sale deed in his name from the respondent without knowledge of respondent and the said fact was came to the knowledge of the respondent on 14/02/2016 when he received notice from his counsel. Thereafter, the respondent lodged police complaint on 02/03/2016 so also lodged complaint to the Supdt. of Police on 05/03/2016. Hence, the cause of action arose on 14/02/2016, 02/03/2016 and 05/03/2016, therefore, civil suit is well within limitation.

11. I have heard both the parties. Perused order below Exh.11 passed by learned Civil Judge Junior Division, Kalmeshwar and considered citations relied on by the applicant. It is the contention of the defendant that plaintiff has filed suit for declaration and cancellation of the sale deed dated 09/02/2009 and in paragraph No. 17 of the plaint it is mentioned that cause of action arose on 09/02/2009 when the sale deed was executed and thereafter arose on 14/02/2016, 02/03/2016 and 05/03/2016, when the plaintiff filed complaint with Superintendent of Police. It is further contention of the defendant that in earlier pending litigation the plaintiff has admitted on oath before the Hon'ble Court, the execution of sale

deed dated 09/02/2009 and added the defendant as necessary party in the suit. As such, contention of the plaintiff that he came to know about execution of sale deed dated 09/02/2009 on receipt of notice dated 14/12/2016, is false and frivolous. It is further contention that as per Article Nos. 58 and 59 of limitation Act, the period to challenge a document is three years from the date of execution. Whereas, suit is filed after nine years. It appears that the Counsel for defendant has filed copy of suit plaint in Regular Civil Suit No. 49/2009 along with pursis at Exh.14. There was no say filed by the plaintiff to his application for rejection of plaint. Admittedly, in Regular Civil Suit No. 49/2009, the plaintiff arrayed the defendant as necessary party in the said suit and it is specifically pleaded that having no other alternative plaintiff has sold his undivided share in the suit property to defendant No. 52 by registered sale deed dated 09/02/2009 and transferred his right in respect of undivided share of the suit property. So in plaint what is written that cause of action arose on 09/02/2009 needs to be considered. However, plaintiff's contention in the present suit that defendant fraudulently got his sale deed executed in his favour and suggested advocate to file the suit and ask the advocate to make

him defendant in the suit. The learned Trial Court relying on the judgment in ***Jamila Begum Vs. Shami Mohd (2019) 2 SCC 727***, wherein, it is held that :

“under article 58 and 59 of the Limitation Act, 1963 in a suit filed for any declaration is to be filed within three years when the right to sue accrues. Under article 59 of Limitation Act, suit filed to cancel or set aside the instrument or decree, the suit has to be filed within three years from the date when the facts entitling the plaintiff to set aside or cancel the instrument or decree become first known to him.”

12. The learned Trial Court rejected application on the ground that merely pleaded by the plaintiff that cause of action arose on 09/02/2009 when the sale deed was executed by the defendant in his name is not sufficient to hold that the cause of action arose on 09/02/2009. The learned Trial Court also observed that the application for rejection of plaint filed after two and half years of filing of written statement and no explanation for said delay.

13. In my opinion, the learned Trial Court totally lost the sight of earlier suit, copy of which is placed on record which is for partition and separate possession, wherein, the present

plaintiff was also plaintiff in the said suit. In paragraph No. 16 of the said suit, there are specific averments that having no other alternative, the plaintiff had sold his undivided share in the property to defendant No.52, Shri Dinesh Jagannath Adole, by virtue of registered sale deed dated 09/02/2009 and transferred his right in respect of undivided share in the suit property. As the said suit was filed on 29/08/2009, there is no other inference can be drawn that the plaintiff was having knowledge about execution of registered sale deed in favour of Shri Dinesh Jagannath Adole on 09/02/2009. As such, the suit ought to have been filed within three years from the date of execution of sale deed of which plaintiff was having knowledge. True it is that at the time of considering application under Order VII, Rule 11 contents in the plaint itself is to be looked into. In the present matter there was no reply filed by the plaintiff to this application of defendant.

14. In plaint itself the date is mentioned as 09/02/2009 on which first cause of action arose. So limitation starts running from that date and subsequent cause of action is having no relevance for the purpose of calculating period of limitation for

filing suit. As such, suit is barred by limitation and liable to be rejected. Thus, order passed by learned Trial Court is hereby set aside. Suit is rejected under Order 7, Rule 11 as barred by limitation. Civil Revision Application stands disposed off.

[SMT. M.S. JAWALKAR, J.]

Jayashree..