

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL REVISION APPLICATION NO. 66 OF 2023

Chandrakant Rambhau Salve and ors__ Vs. _Sheikh Gaffar Sheikh Musa and ors

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R.N.Ghuge, Advocate for applicant

CORAM : AVINASH G. GHAROTE, J.

DATE : 23/06/2023

1] The application challenges the order dated 29.3.2023 passed by the learned Trial Court whereby the application for rejection of plaint Exh.41, under Order 7 Rule 11(d) of CPC has been rejected.

2] It is contended that though the suit has been filed on 1.9.2017 and seeks a declaration that the non-applicant nos.1 to 3 are the owners of Gat no. 481 and for deletion of the names of the original defendant nos.1 to 4 from the column of ownership and possession, though the learned Trial Court has held that the suit fell under Article 55 of the Limitation Act, in view of the fact that a relief was sought of declaration that the plaintiffs were the owners of the property, the suit would fall under Article 58 and not Article 65 of the Limitation Act.

3] The question as to which Article applies for the purpose of determining the limitation is a mixed question of facts and law which cannot be decided without leading evidence. There cannot be any dispute with the proposition as laid down in **Raghwender Sharan Singh vrs. Ram Prasanna Singh, (2020) 16 SCC 601**, that the plaint has to be read in entirety and in a meaningful manner for the purpose of deciding whether a suit is barred by law and so also with the proposition laid down in **Dahiben vrs. Arvindbhai Kalyanji Bhanushali, (2020) 7 SCC 366**, that the Court has to find that whether the plaint discloses real cause of action or an illusory cause of action has been created by clever drafting.

4] As already stated above, in the instant case, the question of applicability of Article 58 or Article 65 of the Limitation Act cannot be something which can be decided at the threshold but would dependent upon the evidence to be laid at the trial. In that view of the matter, I am not inclined to interfere in the impugned order. The revision is therefore dismissed. No costs.