



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 38 OF 2024

Gorakhnath Ramrao Salunke

Petitioner

Versus

1. Asrabai w/o Karbhari Aware

2. Kesharbai w/o Jagannath Kakade

Respondents

...

Mr. Ajeet Kasliwal, Advocate for the petitioner.

...

CORAM : SANDIPKUMAR C. MORE, J.

Dated : 29 February 2024

Order :

1. Heard learned Counsel for the petitioner at admission stage.

2. By way of this application, the present petitioner, who is the original plaintiff in Regular Civil Suit No.448/2022, has challenged the order passed by the Joint Civil Judge (Junior Division), Vaijapur i.e. the learned trial Court, below Exh. 32 in the aforesaid suit. Under the impugned order, the learned trial Court has rejected application (Exh.32) filed by the present petitioner for rejecting the counter-claim of the present respondents / original defendants.

3. On going through the impugned order, it appears

that initially the present petitioner had filed application (Exh.32) for rejecting the counter-claim of the present respondents on two grounds i.e. (1) counter-claim was undervalued and (2) prayer for declaring adoption deed dated 28.06.1991 therein is out of limitation. However, during pendency of the said application, the petitioner withdrew his claim in respect of rejection of plaint on account of insufficient court-fees. As such, he continued only with the limitation aspect. On going through the impugned order, it appears that the learned trial Court has discussed Articles 58 and 59 alongwith Sections 17 and 22 of the Limitation Act and found that the issue of limitation needs to be decided after the evidence is laid in the suit.

4. Learned Counsel for the petitioner relied on certain documents annexed to the application. He pointed out that during the earlier proceedings before the revenue officers the present respondents were well aware about execution of adoption deed which had in fact executed on 28.06.1991, that means long back, and therefore, they cannot claim any declaration in their counter-claim for cancellation of the said adoption deed especially when the Limitation Act has prescribed limitation of declaring such document within

only three years from the date of knowledge of such document.

5. Admittedly, it appears from the earlier proceedings before the revenue officers that the present respondents / defendants were well aware about execution of the aforesaid adoption deed dated 28.06.1991 much prior to preceding three years of filing their counter-claim. However, it is extremely important to note that the petitioner is claiming to be brother of the present respondents only on the basis of the aforesaid adoption deed which is not acceptable to the respondents. The present respondents in their written statement to the suit of the petitioner have averred that the petitioner got executed the said adoption deed when their father was bed-ridden due to illness by mis-representation and fraud. Thus, if such averment by the present respondents is considered, then the petitioner will be under obligation to establish the fact in his suit that father of the present respondents willingly and voluntarily executed the said adoption deed in his favour. As such, validity of the said adoption deed would be tested even in absence of prayer of present respondents in their counter-claim that it be declared void and illegal.

6. Further, on going through counter-claim of the present respondents in the aforesaid suit, it appears that they are claiming to be in possession of the suit property exclusively and claimed perpetual injunction against the petitioner for not to disturb their possession over the suit lands. It is settled position that when in the plaint there are multiple prayers and some of the prayers cannot be granted in view of Order VII Rule 11 of C.P.C., but even in that situation partial rejection of the plaint is not permissible. Therefore, considering all these facts the order of the learned trial Court rejecting the application (Exh.32) of the petitioner to reject the counter-claim of the respondents under Order VII Rule 11 of C.P.C. appears proper. In view of the same, the Civil Revision Application stands dismissed.

(SANDIPKUMAR C. MORE, J.)