



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.65 OF 2024

Mukund Balvirsingh Thakur

...Applicant

Versus

Rameshwari Nandlal Sharma & Ors.

...Respondents

Adv. Vijay Bhalerao Patil for Applicant.

Adv. Datta A. Madake h/f. Adv. Dhananjay Mane for Respondent No.1.

Mr. Prashant H. Sukale h/f. Mr. Madake A. Datta for Respondent No.4.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 18th NOVEMBER 2024.

P.C.:-

1. The Applicant seeks to assail the order dated 7th January 2023 and 31st January 2024 passed below Exhibits-34 and 47 in Regular Civil Suit No.37 of 2021 pending before learned Joint Civil Judge, Junior Division and Judicial Magistrate First class, Erandol, Taluka Erandol, District Jalgaon.

2. Mr. Vijay Patil, learned Advocate appearing for the Applicant submits that the Applicant who is Defendant in Regular Civil Suit No.37 of 2021 had filed application under Order VII Rule 11 of the Code of Civil Procedure, 1908, seeking rejection of plaint on the ground that the suit is under valued and the Plaintiff has no cause of action to file the suit. He would submit that the Plaintiff pleaded in the plaint that the

sale deed has been executed by him was in favour of non-agriculturist and, therefore, it is invalid. However, such ground would not be available before the Civil Court. Insofar as the valuation of suit is concerned, Mr. Patil fairly concedes that such ground may not be available and even otherwise such an objection pertains to curiable defect. He would, thereafter, urge that Plaintiff seeks to set aside sale deed dated 2nd January 2014, but present suit is filed in the year 2021, as such it is hopelessly barred by limitation. The Trial Court ought to have considered objection as to the limitation under Order VII Rule 11 and plaint ought to have been rejected.

3. Per contra, Mr. Madake, learned Advocate appearing for the Respondents invites attention of this Court to the contents of the applications at Exhibits-34 and 47 and points out that the issue of limitation was never raised before the Trial Court. The suit is appropriately valued, based on the consideration of impugned sale deed eventually the appropriate Courts is paid. Hence, he supports impugned order.

4. Having considered submissions advanced, it can be observed that there is no defect as to valuation of the suit and otherwise, it would be a curiable defect. The Trial Court observed in paragraph 11 that in light of the law laid down by this Court in case of *Common Piru*

Caudhari Vs. Berubai Chendu Redhiwale & Ors.¹. The Plaintiff has rightly paid the Court fees. Since Plaintiff is seeking declaratory relief as regards the sale deed, suit has been appropriately valued as per clause (j) of Section 6(iv) and Section 6(iv)(ha). Apparently, the Trial Court has rightly dealt with the issue as to the valuation of the suit and held that it has been properly valued. No fault can be found in the findings recorded by the Trial Court on this aspect.

5. The prayers in the suit would show that the Plaintiff seeks declaration that sale deed dated 14th February 2014 is void since it is obtained by fraud without consideration.

6. It is for Plaintiff to show that the sale deed is result of fraud exercised by the Defendant or the same is without consideration. The Trial Court will have to frame the appropriate issues based on pleadings of parties and render decision on conclusion of trial. Therefore, objection that suit is not maintainable cannot be sustained.

7. Insofar as objection on point of limitation is concerned, apparently, same was not raised before the Trial Court and even not considered in impugned order. Without the foundation of the necessary pleadings in the application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908, such an objection cannot be considered first time in this revision. However, it would be open for the Applicant to make

¹ 2017 (4) All. M.R. 283

the independent application, if so advised and this order shall not treated impediment.

8. Consequently, there is no merit in the civil revision application. It is dismissed.

(S. G. CHAPALGAONKAR, J.)