



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO.108 OF 2024

1. Munira Begum wo Md. Abdul Aleem,
Age : 60 years, Occu.: Household
2. Md. Abdul Aleem s/o Mohd. Qasim Sab,
Age : 62 years, Occu.: Business
3. Salman Ahemad s/o Md. Abdul Aleem,
Age : 41 years, Occu.: Business,

All R/o.: Mutton Market, Ahmedpur,
Tq. Ahmedpur, District : Latur

..... **APPLICANTS**
(Original Defendants)

VERSUS

Farhat Begum w/o Mumtajoddin Attar,
Age : 62 years, Occu.: Household,
R/o.: Court Road, Bhagyanagar,
Tq. Ahmedpur, District : Latur

..... **RESPONDENT**
(Original Plaintiff)

....
Mr. Avinash D. Hande, Advocate for the Applicants
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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 31/07/2024.

ORDER :

1. The applicants, who are the original defendants in Regular Civil Suit No. 299 of 2021, have challenged order below Exhibit-32 dated 19/04/2024 passed by the learned trial court i.e. IInd Joint

Civil Judge (Junior Division), Ahmedpur, District : Latur, whereby their application for rejection of the plaint, has been dismissed.

2. The learned counsel for the applicants submits that the respondent / plaintiff has filed the aforesaid suit for seeking decree of perpetual injunction as well as declaration that earlier compromise decree in Regular Civil Suit No.255 of 2005 be declared not binding upon her. The plaint is liable to be rejected on the ground of absence of cause of action as well as limitation. The learned counsel for the applicants/defendants submits that the cause of action given by the respondent / plaintiff in her plaint, is imaginary and since the decree of 2005 is challenged in the year 2021 it is hopelessly time barred.

3. Heard the learned counsel for the applicants / defendants on admission and also perused the documents on record alongwith the impugned order.

4. Admittedly, the respondent / plaintiff has filed the suit for restraining the present appellants / defendants and she has also claimed declaration in respect of compromise decree in earlier suit i.e. Regular Civil Suit No.255 of 2005. The rejection of plaint is

challenged on two grounds i.e. absence of cause of action and suit being barred by limitation. So far as absence of cause of action is concerned, on perusal of the plaint itself it is clearly evident that in para- 8 the plaintiff / respondent has given two dates namely 30/06/2021 and 30/03/2021. It appears that the respondent / plaintiff claims that on 30/06/2021 when she told the applicants / defendants for not to construct on her place i.e. the suit property, they refused for the same and therefore, cause for filing suit for perpetual injunction had arisen. As such, when the plaint itself indicates cause of action, then the plaint cannot be rejected as the cause of action has to be tested on the basis of evidence.

5. The learned counsel for the applicants / defendants also submitted that the respondent / plaintiff has challenged the compromise decree of 2005 in the year 2021, which is not at all in limitation. Admittedly, for such declaration a period of three years is there in the Limitation Act, which starts running from the date of knowledge. It is significant to note that the present respondent / plaintiff was not party to the earlier suit i.e. RCS No.255 of 2005 and the plaintiff has also given one date i.e. 30/03/2021 for filing the present suit. Though it is not specifically mentioned in the suit as to on which date the plaintiff / respondent came to know about

the said decree for the first time, but she has at least mentioned the date 30/03/2021 as a cause of action for filing the suit. As such, according to the respondent / plaintiff, cause of action arose for filing the present suit on 30/03/2021 and also on 30/06/2021. It is to be noted here that to ascertain the date of knowledge, evidence is required and the applicants / defendants are under obligation to establish on the basis of evidence that the respondent / plaintiff was having knowledge of the compromise decree before preceding three years of filing this suit. Under such circumstances, the plaint cannot be rejected under Order-VII Rule 11 of CPC at this juncture on the grounds of absence of cause of action and suit being barred by limitation. Therefore, no interference is required in the impugned order and accordingly the civil revision application stands dismissed at admission stage and disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)