



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 111 OF 2024

1. Pandhari s/o. Sambhaji Madde,
2. Daivshala w/o. Pandhari Madde,
3. Aruna w/o. Bharat Madde,
4. Sachin s/o. Bharat Madde,
5. Saurav s/o. Bharat Madde

... APPLICANTS

(Ori. Defendant Nos. 5 to 11)

VERSUS

1. Ashwini w/o. Gajanan Jamkar,
2. Vasant s/o. Vitthalrao Patil,
3. Sow. Premla w/o. Vasant Patil,
4. Ghanshyam s/o. Vasant Patil,
5. Shriram s/o. Vasant Patil,
6. Bhagwat s/o. Sambhaji Bhikane,
7. Narayan s/o. Shankarrao Jalde

... RESPONDENTS

(Resp. Nos.2 to 7 - Ori. Plaintiffs &
Resp. Nos.1 to 4, 6 & 11)

...
Mr. Anand Chaure h/f. Mr. S.B. Madde – Advocate for Applicants

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CORAM : SANDIPKUMAR C. MORE, J.

DATE : 12th August, 2024

ORDER :

1. Exception is taken in this application to the order dated

Pooja Kale

15.04.2024 passed by the learned Civil Judge Junior Division, Chakur, Dist. Latur (*hereinafter referred to as “the learned Trial Court”*) below application (Exhibit-27) in Regular Civil Suit No. 367 of 2012, by the present applicants who are original defendant Nos.5 to 11 in the said suit. Under the impugned order the learned Trial Judge has rejected the application (Exhibit-27) filed by the present applicants under order VII Rule 11 of Civil Procedure Code for rejection of the plaint.

2. Learned Counsel for the applicants on admission submits that, the learned Trial Court has definitely erred in rejecting the application (Exhibit-27) by ignoring the fact that, respondent No.1/plaintiff has challenged two sale-deeds in respect of the suit lands executed in the year 1993 and 1997 by way of present suit in the year 2012 i.e. much after the limitation period for such declaration. According to him, the plaintiff i.e. respondent No.1 was part of joint family and being an educated person she was well aware of the affairs of the joint family and obviously having knowledge of those sale- deeds.

3. It is settled that, for considering the application under Order VII Rule 11 of Civil Procedure Code only the averments in the

plaint alongwith the documents annexed are to be looked into. It is specifically averred by the plaintiff in paragraph No. 5 of the plaint that, she got knowledge of the sale-deeds under challenged on 13.10.2022 for the first time and therefore, she filed the suit for partition by seeking declaration that the sale-deeds be declared as cancelled. It is to be noted here that, such declaration for cancellation of sale-deeds is to be claimed within three years and the said limitation period starts from the date of knowledge. At this juncture, learned Counsel for the applicants/defendants could not point out any averment or pleading from the plaint that the respondent No.1/plaintiff was having knowledge of those sale-deeds prior to preceding three years period before filing the suit. No doubt the applicants/defendants can established such knowledge of plaintiff by leading evidence during the trial and if they succeed in doing so then the suit of respondent No.1/plaintiff can be dismissed on the point of limitation.

4. However, at this juncture the issue of limitation appears to be mixed question of fact and law since respondent No.1/plaintiff has specifically mentioned that the cause of action i.e. date of knowledge of sale-deeds occurred for the first time on 13.10.2022. In view of the same, even under Article 110 of the Limitation Act,

the suit of plaintiff appears to be within limitation from the date of cause of action as mentioned in the plaint. Of course the applicants/defendants are entitled to prove it as otherwise. In view of the same, no perversity found in the impugned order passed by the learned Trial Court and therefore, the present Civil Revision Application stands dismissed at admission stage.

5. The Civil Revision Application is accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE