



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 186 OF 2023

Sominath Kisan Chinchole

Petitioner

Versus

Sarjabai Sarjedrao Mhaske and others

Respondents

...

Mr. Mahesh R. Sonawane, Advocate for the petitioner.

...

CORAM : SANDIPKUMAR C. MORE, J.

Dated : 31 January 2024.

Order :

1. Heard learned Counsel for the petitioner i.e. the original defendant No.3 in R.C.S. No. 210/2022, at admission stage.

2. The petitioner has challenged the order dated 20.07.2023 passed by the learned Joint Civil Judge (Junior Division), Bhokardan, District Jalna rejecting his application under Order VII Rule 11 of the Code of Civil Procedure (for short, "C.P.C.") for rejecting the plaint in the aforesaid civil suit. Petitioner filed the said application for rejecting the aforesaid suit being barred by limitation and res-judicata, etc.

3. The learned Counsel for the petitioner submits that one R.C.S. No. 124/2004 in respect of the same suit property was filed for partition and the plaintiff in the present

suit i.e. R.C.S. No. 210/2022 was defendant No.4 in that suit. She had also filed her written statement in the earlier suit. Thereafter in the year 2006 compromise took place between the parties and a compromise decree was passed in the said suit on 02.01.2006. Thus, according to the learned Counsel for the petitioner, the plaintiff i.e. the present respondent No.1 having knowledge of her rights in the suit property in the earlier suit, cannot file suit i.e. R.C.S. No. 210/2022 again since it is clearly barred by Limitation Act. He also relied on the following judgments :

- (i) Umed Realators & ors vs Smt Shobha wd/o Mahadeo Deshpande & ors, 2017 (3) Mah.L.J. 308.*
- (ii) Banwari Lal vs Smt. Chando Devi and another AIR 1993 SC 1139*

4. On going through the impugned order as well as documents on record, it is evident that though the present respondent No.1 was defendant No.4 in the earlier suit in respect of same suit property i.e. R.C.S. No. 124/2004 who had also filed written statement in the said suit, but she was not party to the settlement took place between some of the parties of that suit on 02.01.2006. Further, it appears that respondent No.1 has given cause of action in her plaint mentioning that she got the knowledge of aforesaid compromise decree in the year 2020 for the first time, and

therefore, the suit filed by her in the year 2022, is well within limitation.

5. It is settled position that for deciding the objection filed under Order VII Rule 11 of C.P.C. only the pleadings in plaint are to be considered. Therefore, the contention of respondent No.1 / plaintiff that she was aware of compromise decree in her earlier suit in respect of the same suit property in the year 2006, needs to be decided on the basis of evidence. Therefore, limitation in this case appears to be a mixed question of law and fact.

6. Learned Counsel for the petitioner heavily relied on the judgment in the case of *Umed Realators vs Smt. Shobha Mahadeo Deshpande* (supra) and argued that this Court, in the aforesaid case, has observed that contention of the plaintiff that the period of 12 years under Article 65 of the Limitation Act would commence from the date they got knowledge of the sale deed, cannot be accepted. In fact, the period would start from the date of sale deed, and therefore, the suit was barred by limitation. However, the facts of that case are definitely different than the facts of the present case. In the instant case, the plaintiff i.e. the present respondent No.1 has filed subsequent suit for the relief of partition and possession only. She did not challenge any document of

transfer in the subsequent suit. Moreover, she has also not challenged the aforesaid compromise decree which was passed behind her back. The cause of action given by the plaintiff in the plaint itself indicates that she got the knowledge of said compromise decree in the year 2020 which was behind her back, and therefore, she asked the concerned parties for partition of her share. Therefore, the contention of the petitioner that she was already having knowledge of compromise decree and her rights in the suit property, is to be decided on the basis of evidence. Further, when she has not challenged the compromise decree, the judgment of Hon'ble Apex Court in the case of *Banwari Lal vs Smt. Chando Devi* (supra) cannot be made applicable to the present case for the purpose that the suit of respondent No.1 is not maintainable. Considering all these facts, the impugned order appears to be passed properly by the learned trial Court by giving appropriate reasons and considering the legal aspect in the light of the judgments of this Court as well as the Hon'ble Apex Court. Therefore, Civil Revision Application stands dismissed at admission stage and disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)