



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 145 OF 2022

Yamuna w/o Shivaji Rathod
Age : 60 yrs, occ : household
R/o N-13, E-131/03, Cidco,
11th Housing Scheme, Shivaji
Nagar, Aurangabad

Petitioner

Versus

Vijay Shivaji Rathod
Age : 35 yrs, occ : business/agri.,
R/o 'Asmita', Row House No.5,
Beed Bypass Road, Aurangabad

Respondent

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Mr. Namit S. Muthiyan, Advocate for the petitioner.
Mr. Yogesh Bobade, Advocate holding for Mr. S.M. Tawar,
Advocate for the respondent.

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CORAM : SANDIPKUMAR C. MORE, J.

Dated : 4 March 2024

Order :

1. The petitioner who is the original defendant in Special Civil Suit No. 222/2022, has challenged the order dated 04.10.2022 below Exh.14 passed by the learned trial Court i.e. 4th Joint Civil Judge (Senior Division) at Aurangabad whereby her application (Exh.14) for rejection of plaint under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure (for short, "C.P.C."), has been rejected.

2. The present respondent i.e. the original plaintiff has filed the aforesaid suit for declaration and cancellation of the Gift Deed bearing No. 1296/2015 dated 23.02.2015 and also for injunction in respect of the suit house bearing No. N-14, E-131/03 at Shivaji Nagar, Aurangabad. According to the respondent/plaintiff, he had executed the said Gift Deed in favour of the present petitioner, who is his mother only to avoid share in it to his wife Vimal who was in cross terms with him at the relevant time. Further, according to him, after such execution, he requested the present petitioner to re-transfer the suit house in his name and when the petitioner-mother refused for the same, he was constrained to file the aforesaid suit.

3. Learned Counsel for the petitioner vehemently argued that learned trial Court has erroneously rejected the application under Order 7 Rule 11 (a) and (d) of C.P.C. by ignoring that the Gift Deed was executed on 23.02.2015 and it's cancellation has been sought after 7 years i.e. by filing suit on 21.03.2022. As such, the suit is hopelessly barred by Limitation Act as per Article 59 of the said Act. He relied on the judgment of Hon'ble Apex Court in the case of *Raghwendra Sharan Singh vs Ram Prasanna Singh (Civil*

Appeal No. 2960 of 2019).

4. On the other hand, learned Counsel for the respondent/plaintiff strongly submitted that though the Gift Deed is challenged in the suit after 7 years of its execution, but considering the nature of the allegations in respect of the circumstances in which the said Gift Deed was executed, the issue of limitation will not be applicable in the present case and certain evidence is definitely required to determine the real nature of transaction between the parties. He also relied on the judgment in the case of ***Mongia Realty & Abuildwell Private Limited vs Manik Sethi*** reported in ***(2022) 11 SCC 572***.

5. Heard rival submissions. Also perused documents on record.

6. Admittedly, for considering the application under Order VII Rule 11 (a) and (d) of C.P.C. only the averments in the plaint are to be looked into and no contents of written statement or defence are to be considered. Here in this case, the petitioner has claimed rejection of plaint on two grounds that there is no cause of action and secondly the suit is barred by limitation.

7. So far as case of action is concerned, the plaintiff in the plaint itself in para-8 has given cause of action. Therefore, it cannot be said that there is absence of any cause of action.

8. So far as the other ground i.e. the suit being barred by Limitation Act is concerned, admittedly the Gift Deed which is the subject-matter of the suit has been executed on 23.02.2015 and it is challenged after about 7 years of it's execution by filing the present suit on 21.03.2022. There is no dispute that limitation period for seeking cancellation of any document is only three years as per Article 59 of the Limitation Act. In the instant case, there is no question of knowledge since the respondent/plaintiff himself had executed the said Gift Deed. The learned Counsel for the petitioner heavily relied on the observation of the Hon'ble Apex Court in the case of ***Raghwendra Sharan Singh vs Ram Prasanna Singh*** (supra). On going through the said judgment, it appears that the Hon'ble Apex Court rejected the plaint by observing that the plaintiff and his brother himself had executed the Gift Deed on 06.03.1981 and he did not challenge the said Gift Deed till 2003 claiming that it was showy Gift Deed.

9. However, the Hon'ble Apex Court in the recent case of ***Mongia Reality vs Manik Sethi*** (supra), relied upon by the learned Counsel for the respondent, has made the following observation.

“13. The issue as to whether the claim of the appellant is barred by limitation cannot be isolated from the nature of the transactions between the parties. In any event, whether the plea of the appellant as set up in paragraph 5 of the plaint is proved would depend upon evidence adduced at the trial. The course of action which was followed by the learned trial Judge of directing the parties to address arguments on the issue of limitation was irregular. The issue of limitation in the present case would require evidence to be adduced”.

On going through the facts of this case referred above, it appears that there were disputes between the parties about the nature of transaction and there was admission in the plaint that last payment was made on 20.06.2013 and the suit was instituted on 01.04.2017, after 3 years 9 months and 10 days. It was alleged by the defendant in that suit that since the period of limitation for recovery of amount was of three years, the suit was barred by limitation. However, the Hon'ble Apex Court, as per the observation in para – 13 quoted above, has observed that the issue of limitation depends upon the nature of transaction between the parties. The course of action which is to be followed by the trial Court

is to direct the parties to lead evidence and such issue cannot be decided merely on the arguments.

9. In the instant case also, though the Gift Deed apparently appears to be time barred for challenging before the Civil Court, but the true nature of transaction between the parties regarding the said Gift Deed is under scrutiny, and therefore, it certainly needs evidence. Thus, on the basis of observation of the Hon'ble Apex Court mentioned above, the bar of limitation will not apply in the present case as it cannot be isolated from the nature of transaction between the parties. Therefore, considering all these aspects, the order of learned trial court appears to be proper and accordingly the Civil Revision Application stands dismissed.

(SANDIPKUMAR C. MORE, J.)