



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 27 OF 2024

Abhiman Baba Suryawanshi and
another

Applicants

Versus

Zumbarbai Shivaji Landge and others

Respondents

...

Mr. Yogesh R. Shinde, Advocate for the applicants.

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CORAM : SANDIPKUMAR C. MORE, J.

Dated : 6 February 2024.

Order :

1. Heard learned Counsel for the applicants at admission stage.
2. The applicants, who are the original defendant Nos.9 and 10 in R.C.S No.4/2023, have preferred this application challenging the rejection of their application (Exh.52) at the hands of the learned trial Court i.e. the Civil Judge (Senior Division), Paranda vide order dated 19.10.2023.
3. It appears that present respondent Nos.1 to 4 have filed the aforesaid suit for partition and possession alongwith prayer for cancellation of sale deeds namely Document Nos.1397/2011, 958/1999 and 217/2009. Learned Counsel for the applicants/defendants submits that the suit of

respondent Nos.1 to 4 is not filed within limitation. They have also not paid the requisite court-fees and the same is without cause of action.

4. It is settled that while considering the application for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure (for short, "C.P.C.") the pleadings in the plaint are to be considered and in case of challenge on the ground of limitation the plaint needs to be rejected if *prima facie* it appears to be barred by Limitation Act.

5. Admittedly, respondent Nos. 1 to 4/plaintiffs have challenged the sale deeds from the year 1999 upto 2011 by making prayer of cancellation of the same. The plaintiffs in the plaint itself have given cause of action mentioning that they came to know about the aforesaid sale deeds when they filed application on 25.09.2017 before the learned Sub-Divisional Officer, Paranda. The learned Counsel for the applicants pointed out that the respondents/plaintiffs in their application itself have stated the limitation was upto 24.09.2020 for cancellation of the aforesaid sale deeds, and therefore, they admitted that there was *prima facie* delay of 2 years 4 months and 15 days which according to them, could be condoned, since certain period for limitation was stopped

under the orders of Hon'ble Apex Court during the pandemic period of Covid-19. According to the learned Counsel for the applicants, such condonation of delay in filing suit was not permissible since even after the exemption of said Covid-19 period, there was still delay as the present suit was filed by the respondents/plaintiffs on 09.06.2023.

6. It is significant to note that the plaintiffs are claiming that cause of action for the suit arose for the first time on 25.09.2017. Though the prayer is made for cancellation of aforesaid sale deeds by the plaintiffs/respondents, but the suit is not for sole purpose of cancellation of aforesaid sale deeds. It is also for partition and for the relief of partition, there appears limitation of 12 years and the limitation period starts running as per Article 110 of the Limitation Act if there is an exclusion theory. But in absence of such theory there is no limitation for partition suit. Moreover, in the plaint itself respondents/plaintiffs have given valuation of the suit for distinct reliefs. Therefore, it appears that the issue of limitation involved in this matter requires reliable evidence. Moreover, the court-fees can also be recovered at any stage if it is found that proper valuation is not made. Even otherwise also, if there is challenge to

valuation of the suit, the Court is expected to give an opportunity to the plaintiffs to deposit the insufficient court-fees, if any under Order VII Rule 11 of C.P.C. It is also settled that if some of the prayers are time barred and some of them are within limitation, partial rejection of plaint is not permissible. Considering all these aspects, the impugned order passed by the learned trial Court appears to be proper, and therefore, the present application stands dismissed at the admission stage.

(SANDIPKUMAR C. MORE, J.)