



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

22 CRA NO. 24 OF 2024

VANDANABAI AMBADAS PHULE THR. G.P.A. AMBADAS BHIKA
PHULE

VERSUS

KADUBA BHAGAJI PANDHARE AND OTHERS

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Mr. Anuj Fulfagar h/f Mr. Katneshwarkar P. R. Advocate for the Petitioner

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 22/01/2024.

P. C. :

1. Heard learned counsel for the applicant.
2. The present application is filed challenging the impugned order dated 22/11/2023 whereby the learned trial court i.e. Civil Judge (J.D.) Bhokardhan, has rejected the application of the present applicant i.e. original defendant No.1 filed as per Order VII Rule 11 (A & D) of CPC.
3. On going through the impugned order, it appears that the learned trial court has declined to hold that the suit of the plaintiff is *prima facie* barred by limitation as in the said suit sale deed of 2001 is challenged in the year 2017.

4. The learned counsel for the applicant pointed out that the plaintiffs cannot challenge the sale deed of 2001 in the year 2017. He relied on the one mutation entry No.1710, which according to him, was filed by the plaintiffs before the trial court. He pointed out that plaintiff Kaduba was having knowledge about the sale deed executed in the year 2001, in the year 2013 itself and therefore, the suit is clearly barred by limitation. However, surprisingly no such averment finds place in the application of present applicant under Order VII Rule 11(A & D). On the contrary, it appears that nothing was argued on this aspect before the learned trial court. The learned counsel for the applicant is arguing this aspect for the first time in this CRA. Further, even if the name of plaintiff No.1 is reflected in the said mutation entry, it has to be ascertain as to how the name of the plaintiff No.1 had come there. The plaintiffs have given cause of action in the plaint itself mentioning that they came to know about the execution of sale deed of the year 2001 in the year 2016 itself. Therefore, to ascertain the question of limitation certain evidence will be required. Therefore, at this juncture, I do not find any substance in the present application. In view of the same, the civil revision application stands dismissed at the admission stage.

5. The learned trial court shall decide the issue of limitation by considering the entire evidence on record as well as the the documents filed on record.

6. The present applicant i.e. defendant Non.1 is at liberty to produce on record the evidence in respect of aforesaid mutation entry No.1710.

7. Civil revision application is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)