



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 7 OF 2024

Samad s/o. Masum Shah (died)
Through LR's

1. Afsarabi wd/o. Samad Shah,
Age : 55 years, Occ. : Household,
2. Manzur s/o. Samad Shah,
Age : 34 years, Occ. : Labour,
3. Ajaz s/o. Samad Shah,
Age : 32 yeas, Occ. : Service
4. Shakur s/o. Samad Shah,
Age : 28 years, Occ. : Education,
5. Zakera d/o. Samad Shah,
Age : 38 yeas, Occ. : Service,
6. Nazia d/o. Samad Shah,
Age : 36 yeas, Occ. : Household,
7. Shakera d/o. Samad Shah,
Age : 30 years, Occ. : Household,
8. Iliyas s/o. Ismail Shah,
(*L.R. of Ismail s/o. Masum Shah*),
Age : 40 yeas, Occ. : Business,

All R/o. : Phulambri, Tq. Phulambri,
Dist. Aurangabad

... APPLICANTS

VERSUS

1. Isa s/o. Masum Shah,
Age : 95 years, Occ. : Agriculture,
R/o. : Phulambri, Tq. Phulambri,
Dist. Aurangabad

... RESPONDENT

...

Ms. Medha Pramod Patel h/f. Mr. Abhijit P. Avhad – Advocate for Applicants

Mr. Akshay Kulkarni h/f. Mr. T.S. Shaikh and Mr. R.S. Kazi – Advocate for sole Respondent

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CORAM : SANDIPKUMAR C. MORE, J.

DATE : 24th April, 2024

ORDER :

1. The applicants who are the original defendants in Regular Civil Suit No.4 of 2023, have challenged rejection of their application below Exhibit-11 dated 27.11.2023 for rejection of the plaint in the said suit under Order VII Rule 11 (a) and (d) of Civil Procedure Code.

2. The present respondent/plaintiff filed the suit for declaration of ownership over the suit property alongwith declaration that, Mutation Entry No.2155 dated 22.07.1994 being not binding upon him and also for injunction. The present applicants are contending that the said mutation entry being certified long back i.e. on 22.07.1994, cannot be declared not binding upon the plaintiff after gap of 29 years. Thus, the applicants are claiming that the suit of respondent/plaintiff is hopelessly barred by Limitation Act to that extent. The applicants also claimed that there is no cause of action

for filing the suit by respondent/plaintiff. The respondent/plaintiff opposed the aforesaid application below Exhibit-11 filed by the applicants for rejection of plaint. The learned Civil Judge Junior Division at Phulambri, Tq. Phulambri, Dist. Aurangabad i.e. learned Trial Court after hearing rival submissions rejected the same. Hence, this Civil Revision Application.

3. Learned Counsel for the applicants pointed out that, when the suit of plaintiff is based on alleged fraud committed by the applicants/defendants then it was necessary for him to plead such concealment and in absence of the same his suit challenging the mutation entry certified almost 29 years before, is time barred under Section 17 of the Limitation Act. In addition to her submission she relied on the following judgment :

- (a) Hon'ble Apex Court in the case of **Super Diamond Tools and Others Vs. K. Mohan Rao** in *Civil Appeal No.6216 of 2012* decided on 2nd March, 2023

4. On the contrary, learned Counsel for respondent/plaintiff supported the impugned order and pointed out that, the plaintiff has given specific cause of action in the plaint itself and the documents produced on record indicated that he got the knowledge of Mutation Entry No.2155 in the month of May-2021 for the first

time and, therefore, his suit is well within limitation. According to him, the judgment relied upon by the learned Counsel for the applicants in fact helps the respondent/plaintiff.

5. Heard rival submissions and also perused the documents on record.

6. Admittedly, for considering the application under Order VII Rule 11 (a) and (d) of Civil Procedure Code only the averments of plaint and the documents annexed to it are to be considered. On perusal of the plaint it is evident that, the plaintiff has given specific cause of action in paragraph No.8, according to which the applicants had come in the suit property in the month of May-2021 and asked him to vacate the land as per Mutation Entry No.2155. The plaintiff is claiming that, he got the knowledge of said Mutation Entry No.2155 for the first time at the relevant time and, therefore, he filed the application to get certified copy of mutation entry from the concerned authority and challenged the same before the Revenue Officer thereafter. Admittedly, Mutation Entry No.2155 appears to be certified in the year 1994 but when the plaintiff has come with the specific case that he got the knowledge of said entry in the month of May-2021 for the first

time, it has to be ascertain on the basis of evidence which is possible only at the time of trial of the suit. The applicants have not pointed out any document annexed to the plaint indicating that, the plaintiff was having knowledge of such mutation entry prior to May-2021. As such, the issue of limitation in the instant matter is mixed question of law and facts which can be ascertain only after leading the evidence.

7. Learned Counsel for the applicants heavily relied upon the judgment of Hon'ble Apex Court in the case of Super Diamond Tools and Others (*supra*) wherein following observation is made :

10. *The allegations in the counter claim are only to the effect that the first respondent set up a firm within 6 months of the leaving the appellant's firm. Section 17 of the Limitation Act is an exception to the rule that the period of limitation commences from the date of cause of action. However, where the condition contemplated under Section 17 - such as fraud exists, then subject to proof of fraud (based on specific averments) the date when limitation begins to be seen is date of knowledge of the plaintiff. The principle consistently followed by this Court in its past decisions such as **Shri Vallabh Glass Works Ltd. v. Union of India**¹ and **Commissioner of Sales Tax, UP v. Auriaya Chambers of Commerce, Allahabad (1986) 3 SCC 50, (1986) 2 SCR** is that the*

*date of knowledge of fraud - or such misfeasance - is the starting point for limitation. Further, it has been held by this Court in **R. Radha Bai & Ors. v. P. Ashok Kumar (2019) 13 SCC 445, (2018) 12 SCR 143** that Section 17 of the Limitation Act :*

“does not extend or break the limitation period. It only postpones or defers the limitation period. This is evident from the phrase “The period of limitation shall not begin to run.”

8. As per the aforesaid observation, if the suit of plaintiff is based on certain fraud then the limitation begins to run from the date of knowledge of plaintiff in respect of such fraud. There is no material on record at this juncture either from the plaint or the documents annexed to it that, the plaintiff was aware of certification of Mutation Entry No.2155 prior to May-2021, therefore, to come to the conclusion that plaintiff was having knowledge of the alleged fraud i.e. certification of Mutation Entry No.2155 in the year 1994 itself, the applicants must prove the said fact on the basis of reliable evidence. Further an issue to that effect needs to be framed. Thus, considering all these aspects the rejection of application under Order VII Rule 11 (a) and (d) of Civil Procedure Code for rejecting the plaint at the hands of learned

Trial Court appears proper. As such, there is no substance in the present Civil Revision Application and it stands dismissed.

9. The Civil Revision Application is accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE