

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

**MISC. CIVIL APPLICATION NO.805/2019
IN
CIVIL REVISION APPLICATION NO.1850/2019
AND
MISC. CIVIL APPLICATION NO.673/2024 (F)
IN
MISC. CIVIL APPLICATION NO.805/2019
AND
CIVIL REVISION APPLICATION NO.1850/2019**

ROOPALI SUNIL LOTLIKAR & 3 ORS. ...APPLICANTS

Versus

**RATNEM VISHNU KAMAT @
RUKMABAI VISHNU KAMAT SINCE
DECEASED THR. HER LRS & 5 ORS. ... RESPONDENTS**

**Mr Prasheen Lotlikar, Advocate for the Applicants.
Ms Marie Rosette Pereira, Advocate for Respondent No.2.**

**CORAM: M. S. SONAK, J.
DATED: 22nd MARCH 2024**

P.C.:

- 1.** Heard Mr Prasheen Lotlikar for the applicants and Ms Marie Rosette Pereira for respondent no.2.
- 2.** The delay in instituting this revision application is yet to be condoned. The delay is of 390 days.
- 3.** There are some issues of service on the respondents and therefore, the matter is delayed. Accordingly, Mr Lotlikar was requested to address the Court on the merits of the revision

application because, if it was found that the revision lacked merits, there was no point in spending additional time serving the respondents.

4. Accordingly, Mr Lotlikar was heard on the merits. He submitted that the averments in paragraphs 14 and 16 of the plaint nowhere state with clarity that the plaintiffs were unaware of the execution of the Sale Deed dated 13.06.2011 at any time before 02.06.2012. He submits that the pleadings are vague, and based on such vague pleadings, a Suit, which is otherwise beyond limitation, cannot be passed off as one within limitation. He submits that such clever drafting is insufficient to reject an application under Order 7, Rule 11 of the Code of Civil Procedure (CPC).

5. Mr Lotlikar submits that the Trial Court has rejected the application under Order 7, Rule 11 by simply observing that the plaint states that the Suit is within limitation. He submits that this is impermissible and amounts to non-application of mind.

6. The Suit seeks cancellation of the Sale Deed dated 13.06.2011. The Suit was instituted sometime in May 2015. Accordingly, it is contended that the Suit was barred by limitation because it was instituted after three years of the execution and registration of the Sale Deed dated 13.06.2011.

7. Paragraphs 14 and 16 of the plaint read as follows:-

“14. That Inspite of the same defendants No.5 and 6 acting upon the irrevocable General Power of Attorney dated:

25/10/2001 said to have been executed by these plaintiffs in favour of Defendant No.5, sold the suit schedule property in favour of defendant No. 1 to 4 and as per the said sale deeds, when these plaintiffs have received the extract notices, they have filed objection for the said mutation entry No. 40069 and 40070 and the said disputed entry proceeding is pending before the Court of the Joint Mamlatdar IV of Bardez at Mapusa.

16. The cause of action arose to file the present suit in the month of June, 2012 i.e. when the plaintiffs have received the mutation notices on 2/6/12 from the office of the Mamlatdar IV of Bardez at Mapusa in respect of the suit property and again when the plaintiffs came to know in the month of December 2014 when defendants No.1 to 4 are trying to sell the suit property to third person.”

8. From the conjoint reading of the two paragraphs, there are pleadings about the plaintiffs receiving mutation notices on 02.06.2012. The plaintiffs have averred that the cause of action accordingly arose for the first time in the month of June 2012. In paragraph 14, it is pleaded that the plaintiffs even filed their objections pursuant to the mutation notices they received on 02.06.2012. The plaintiffs have pleaded that the cause of action arose again in December 2014 when the plaintiffs came to know that the defendants were trying to sell the suit property to some third person.

9. By ignoring the second or further cause of action, even if we have to focus on the first cause of action, it cannot be said that there are no pleadings about the receipt of mutation notices on 02.06.2012 and the cause of action accruing in the month of June 2012. On a meaningful reading of the plaint, it does appear that the plaintiffs claim knowledge of the Sale Deed dated 13.06.2011 on the receipt of mutation notices on 02.06.2011. As a result, it is difficult to hold that the Suit was barred by limitation based on any statement in the plaint.

10. In the above circumstances, the Trial Court was justified in rejecting the application under Order 7, Rule 11 of the CPC. There is no question of considering the defence at the stage of considering such an application. However, once an issue of limitation is framed, it will be open to the petitioner to lead proper evidence and show that the plaintiffs were aware of the execution of the sale deed much earlier. Consequently, the Suit, as was instituted, was barred by limitation. Equally, it will be open to the plaintiffs to prove otherwise. Since these are mixed questions of law and fact, it is only appropriate that an issue of limitation is cast and the plaint is not rejected by resorting to the provisions of Order 7, Rule 11 of the CPC.

11. Since no case is made out on merits, no purpose will be served by spending some time on service to the unserved respondents on the application for condonation of delay.

12. Even otherwise, the cause indicated for the delay of almost 390 days in instituting this Civil Revision Application is that the

plaintiffs had instituted an Appeal From Order No.10/2019 to challenge the denial of interim reliefs in the Suit. This appeal was disposed of on 03.05.2019. Now, this appeal has absolutely nothing to do with the petitioners' plea that the plaint itself should have been rejected under Order 7, Rule 11 of CPC. Accordingly, no sufficient cause has also been shown to condone this delay of 390 days.

13. For the above reasons, the application for condonation of delay and, consequently, the Civil Revision Application are dismissed. All pending misc. civil applications are also dismissed. There shall be no order for costs.

14. Though the application for condonation of delay and, consequently, the Civil Revision Application are dismissed, it is clarified that the observations in this order are for the limited purpose of deciding the issue of condonation of delay and whether any case was made out for rejection of the plaint under Order 7, Rule 11 of the CPC. Accordingly, none of the observations in this order should affect or influence the Trial Court while deciding the issue of limitation based on the evidence that the parties may lead on this issue. The issue of limitation will have to be considered independently, in accordance with the law and the evidence that the parties lead on the same.

M. S. SONAK, J.