

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.112 OF 2024

Shivaji Mhadu Sonawane and Ors.

.. Applicants

Versus

Chandrkant Keru Sonawane and Ors.

.. Respondents

.....

- Mr. Narayan Rokade a/w. Mr. Shubham Jangam i./by Sachin Padaye, Advocates for Applicants.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 20, 2024

P.C.:

- 1.** Heard Mr. Rokade, learned Advocate for Applicants.
- 2.** Civil Revision Application takes exception to order passed in Application filed below Exhibit-33 in Regular Civil Suit No.74 of 2019 dated 21.06.2023 by the Defendant Nos.4 to 13. Defendant Nos.1 to 3 in the Suit proceedings are State Government and its functionaries. Application was filed by private Respondents namely Defendant Nos.4 to 13 seeking rejection of suit plaint under Order VII Rule 11 of the Civil Procedure Code, 1908 (for short '**CPC**') solely on the ground that the suit was barred by limitation.
- 3.** It is contended by Applicants that Plaintiffs prosecuted proceedings in respect of the suit property under Section 5 and Section 23(2) of the Mamlatdar Courts Act, 1906 (for short '**the said Act**') unsuccessfully and it is only thereafter they filed suit namely

Regular Civil Suit No.89 of 2018. However in that suit the Trial Court passed order dated 05.01.2019 allowing Plaintiffs to withdraw the said suit unconditionally. Thereafter the plaintiffs filed the present Suit. This is what is argued by Mr. Rokade.

4. Mr. Rokade as drawn my attention to order dated 05.01.2019 and would contend that in view of the aforesaid reasons, the second suit i.e. Regular Civil Suit No.74 of 2019 is clearly barred by limitation since it is beyond the period of three years from date of the Plaintiffs having prosecuted proceedings under Section 23(2) of the said Act before the Sub Divisional Officer. I have perused the pleadings and the impugned order. It is seen that in the order dated 05.01.2019, reasons for withdrawal have been stated in the *pursis* filed by the Plaintiffs. Plaintiffs did not implead Respondent Nos.1 to 3 i.e. Defendant Nos.1 to 3 in the earlier suit proceeding and on that very specific ground sought withdrawal of the earlier suit so that they could file a fresh Suit.

5. Next it is seen that prosecution of Plaintiffs' right in the suit property under Section 5 and Section 23(2) of the said Act cannot oust the jurisdiction of the Civil Court in so far as Plaintiffs' right to maintain the Civil Suit is concerned. This is the well settled law.

6. In that view of the matter, there is no substance in the submissions advanced by Mr. Rokade on behalf of Applicants i.e. the

Defendant Nos.4 to 13 that the present Suit is not maintainable. The order dated 21.06.2023 is a correct order passed in the facts and circumstances of the present case and does not warrant any interference whatsoever from this Court. The order dated 21.06.2023 is sustained. Resultantly Writ Petition fails.

7. Mr. Rokade would submit that directions be passed to dispose of Regular Civil Suit No.74 of 2019 considering the facts and circumstances in the present case. This request made by Mr. Rokade can certainly be allowed. Learned Trial Court is directed to dispose of Regular Civil Suit No.74 of 2019 as expeditiously as possible and in any event within a period of one year from today.

8. Parties are directed not to take any unnecessary adjournments and co-operate with the learned Trial Court. Trial Court is directed to give adjournments to the parties only if they are utmost necessary due to any emergency or exigency and decide Regular Civil Suit No.74 of 2019 strictly in accordance with law.

9. This order is passed because dispute between the parties is more than one decade old and in that view of the matter, the Civil Suit deserves to be decided as expeditiously as possible.

10. With the above directions, Civil Revision Application is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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