

Urmila Ingale

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9629 OF 2024

Shri Vinayak Pratap Sakhare and anr. .. Petitioners

Versus

Shri Mallikarjun Aashayya Arkal and ors. .. Respondents

- Mr. Anant Vadgaonkar, for Petitioners.

CORAM : MILIND N. JADHAV, J.

DATE : JULY 16, 2024

P. C.:

1. Heard learned counsel for the parties. Perused the impugned order dated 12/01/2024. It is contended by the writ Petitioners who are the Defendant nos. 4 and 5 before the Trial Court that they were impleaded in the Suit proceedings in the year 2014. The Suit was filed in the year 2010 for specific performance of agreement dated 06/10/2007 between the Plaintiffs and the Defendant Nos. 1 and 2 only. By virtue of the amendment application in the year 2015, the Plaintiffs have sought to challenge a sale deed of 2003 which is in favour of the Defendant Nos. 4 and 5 as also subsequent sale deed of 2008. The amendment stood allowed and the Defendant Nos. 3, 4 and 5 came to be impleaded. It is now contended by the Defendant Nos. 4 and 5 that the Suit itself is not maintainable and therefore, the

Defendant Nos. 4 and 5 filed an application under Order VII Rule 11 of the Code of Civil Procedure seeking rejection of the Suit Plaintiff.

2. *Prima facie*, I am of the opinion that insofar as the cause of action and reliefs against the Defendant Nos. 4 and 5 are concerned, they, on the face of record, are not sustainable in view of the law of limitation, but whether the Defendant Nos. 4 and 5 can seek rejection of the entire Suit Plaintiff and deprive the Plaintiffs of their right to seek specific performance of agreement dated 06/10/2007 executed between the Plaintiffs and Defendant Nos. 1 and 2 would be a question that would arise for consideration.

3. In view of the above, issue notice to the Respondents made returnable on 13/08/2024. Humdast permitted.

4. The Defendant Nos. 1, 2 and 3 as also the Defendant Nos. 4 and 5 are directed to take cognizance of this order.

5. In addition to Court's notice, the Petitioners are directed to serve copy of the Petition along with copy of this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date.

6. After receiving the notice, Respondents are entitled to file affidavit-in-reply within a period of 2 weeks from today, if so desired

with an advance copy to the Advocate for Petitioners. Rejoinder, if any, shall be filed on or before the next date.

7. The Trial Court is directed to defer the hearing of the proceedings in the meanwhile until the Writ Petition shall be determined.

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[MILIND N. JADHAV, J.]