



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 305 OF 2024

Sanjay Anant Lakde and Ors.

...Applicants

vs.

Shaghupta Arshad Mulla and Ors.

...Respondents

Mr. Sanjay Patil	Advocate for the Applicants
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CORAM : S. M. MODAK, J.

DATE : 16th DECEMBER 2024

P.C. :-

1. Heard learned Advocate for the Applicants-Defendants.
2. In RCS No. 32 of 2020 filed by present Respondents before the Court of CJJD Wada, it is on page no. 12, the prayers are as follows:-
 - (a) the Plaintiffs be declared as owner and possessor of the suit land.
 - (b) If the defendant nos. 1 to 4 were found in possession, on the basis of sale deed, the possession be handed over from them to the Plaintiffs.
3. I have read the averments in the plaint the following are the averments:-

- (i) One Amina S. Bubere is their mother and she expired on 08.05.2014.
- (ii) One Anant Mithalal Lakade, is father of Defendant Nos. 1 to 4, he died on 20.01.2020.
- (iii) One Kamal Rabbani Bhabecha also expired in the year 2003-04.
- (iv) According to the Plaintiff, they are Sunni Muslims and their mother is not authorized to sale the share of minor children.
- (v) One Kamal Rabbani Bhabe, who is half brother of their mother Amina, cheated her and sold the suit land to Anant Lakade vide sale deed dated 22.03.1983.
- (vi) The Plaintiffs are described as minors.
- (vii) The house standing in the suit land is also sold.
- (viii) In para no. 4, Plaintiffs have pleaded their respective date of birth and the information about school record.
- (ix) The Plaintiffs have pleaded two sale deeds were executed one after another in respect of the same property on 22/05/1983. On 08.01.2014, Plaintiff realized that suit land is standing in the name of the Anant Lakade. They got

knowledge on 08.01.2014 when they obtained 7/12 extract.

- (x) They are also pleaded about challenging mutation entry by way of R.T.S Appeal, para no. 7.
- (xi) Plaintiffs have pleaded that the suit land is in their possession.
- (xii) In para no. 11, they have pleaded about cause of action which first occurred on 08.01.2014 and occurred subsequently also and the last cause of action occurred on 09.06.2020.
- (xiii) On this basis the suit is filed. The sale deed is not challenged. There is also only prayer for declaration as to ownership and handing back the possession and for injunction.

4. When Defendant Nos. 1 to 4 have filed an application as per the provision of Order VII Rule 11 of the Civil Procedure Code, at page no. 47, it was rejected by the trial Court on 13.02.2024, at page no. 49.

The sole ground is suit is barred by law of limitation. According to them, there is delay of 37 years. The reasoning finds place in para no. 6 of the impugned order. The trial Court has rejected the prayer, because

the suit is for composite prayer of injunction and declaration as to ownership. The trial Court further observed the issue of the limitation is mix question of fact and law.

5. Learned Advocate for the Applicants submitted that the averment in the plaint suggest first cause of action occurred in 2014 and suit is filed in the year 2020. He submitted, if they want declaration as to ownership on the background of the sale deed executed in 1983, the suit ought to have been filed within time limit either from 1983 or from 2014, both these have not happened.

6. It is true an application for rejection of the plaint has to be decided on the basis of the averment in the plaint only. The Court has to read the averment in the plaint as whole. If there is relief of injunction and cause of action shown as happening of the events on 09.06.2020, then question is different.

7. On this background, this Court feels instead of rejection of the plaint, the Defendants can apply for striking out averment in the plaint which deals with the prayer seeking declaration as to ownership.

8. Trial Court to decide such request if made by Defendants independent of the observations about limitation plea in the order

dated 13/02/2024 and to take appropriate decision after hearing both the Parties.

9. With these observations, Civil Revision Application is disposed of.

[S. M. MODAK, J.]