



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL REVISION APPLICATION NO.26 OF 2022

[Jahur Mohd. s/o Noor Mohammad .vs. Islamoddin Sirajoddin and others]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. Aparna Telange, Adv. h/f Mr. Ashok P. Tathod, Adv. for the applicant,
None for the non-applicants though served.
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CORAM : M.W. CHANDWANI, J.

DATE : 12/02/2024.

The applicant has filed this revision application challenging the order dated 21.12.2019 rejecting the application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint.

2. The non-applicant nos.1 to 7 (original plaintiffs) filed a suit bearing Regular Civil Suit No.61/2014 for partition, separate possession and cancellation of the sale-deed, alleging that Shaikh Rehaman was the grandfather of the non-applicants. He died intestate leaving behind the suit property. After his death, the property devolved upon his daughter Halimabi, the mother of non-applicant nos.1 to 7 and son Shaikh Razzak, the father of non-applicant nos.8 to 16 (original defendants). Therefore, non-applicant nos.1 to 7 being lineal descendants of the deceased Shaikh Rehman, claimed partition and separate possession with declaration that the sale deed executed in favour of the applicant is not binding on them.

3. The non-applicants appeared and filed application before the learned Trial Court on the ground that there is no specific pleading in relation to the death of Halimabi. Also, the date of death of Shaikh Rehman has not been averred in the plaint. Therefore, the suit is lacking cause of action and sought rejection of the plaint. In addition to this ground, the ground of limitation is also taken on the premise that Shaikh Rehman died in 1986 and the suit came to be filed in the year 2014. Therefore, the suit is barred by the law of limitation. Learned Trial Court rejected the application of the applicant. Feeling aggrieved with the said impugned order, the present revision application came to be filed.

4. Heard the learned counsel for the applicant. Though the non-applicants were served, but nobody appeared on behalf of the non-applicants.

5. The rejection of the plaint is sought on the ground that there is no cause of action since the non-applicant nos.1 to 7 have not pleaded specifically in relation to the death of Halimabi and date of death of Shaikh Rehman has not been averred in the plaint. Therefore, the cause of action does not accrue to respondent nos.1 to 7.

6. The perusal of plaint reveals that the respondent nos.1 to 7, in their plaint, have claimed that Halimabi, the mother of respondent nos.1 to 7 and Shaikh Razzak, the father of respondent nos.8 to 16, were surviving descendants of Shaikh Razzak. It is also pleaded in the plaint that after the death of

Shaikh Rehman, Halimabi and Shaikh Razzak inherited the suit property. It is contended that both the surviving descendants have died. The plaint further depicts that the property is not partitioned and the partition was demanded by issuing notice on 20.06.2014 and 07.08.2014. The suit has been filed in the year 2014 itself. After the respondent nos.1 to 7 demanded for partition in the year 2014 itself, therefore, from averments made in the plaint, it cannot be said that the suit is filed beyond the period of limitation. Thus, the Trial Court has rightly rejected the application of the applicant filed under Order 7 Rule 11 of the Code of Civil Procedure. No illegality or perversity found in the impugned order. The application is sans merit. Accordingly, **the application is rejected.**

(M.W. Chandwani, J.)