



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

CIVIL REVISION APPLICATION NO.168 OF 2018

Dr. Arunkumar s/o Kisanlal Jaiswal

(Vs.)

Premlata @ Lata w/o Shyamsundar Jaiswal and another

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

Court's or Judge's orders.

Mr. Gharote, Advocate h/f Mr.A.C. Khare, Advocate for applicant.

Mr. A.D. Gabhane, Advocate h/f Mr. A.S. Joshi, Advocate for respondent No.1.

CORAM : G.A. SANAP, J.

DATE : 23.08.2024

1. In this revision application, challenge is to the order dated 22.06.2018, passed below Exh.16 by the learned 6th Joint Civil Judge Senior Division, Nagpur, whereby the learned Judge rejected the application made under Order 7 Rule 11 (d) of the Civil Procedure Code, 1908 (for short, “the C.P.C.”).

2. Non-applicant No.1-plaintiff has filed the suit for recovery of Rs.30,00,000/- (Rupees Thirty

Lakhs Only) from the applicant and non-applicant No.2 (defendant Nos.1 and 2 in the suit). It is the case of the plaintiff that defendant No.1 has sold the house No.417 situated on survey No.178, sheet No.26/18, Mouza Lendra, Dharampeth Nagpur behind her back. Her father was the owner of the house. After the death of her father, she along with defendant No.1 became the owner. The sale deed was executed behind her back. She had no knowledge of the execution of the sale deed. In the month of March 2017, she came to know about the said transaction and the receipt of the entire consideration of the sale by defendant No.1. The plaintiff contended that defendant No.2 was in hand-in-glove with defendant No.1. On these averments, she filed the suit for recovery of Rs.30,00,000/-.

3. The defendants made the application under order 7 Rule 11 (d) of the C.P.C. They have contended that suit is barred by limitation. They prayed that the issue of jurisdiction be framed and

tried as a preliminary issue. It is contended that said issue of limitation goes to the root of the matter. The Court has also no jurisdiction to try the suit because it is barred by limitation.

4. Learned Judge, on consideration of the facts pleaded in the plaint and more particularly in paragraph No.10, has observed that it discloses cause of action against defendant Nos.1 and 2. Learned Judge has observed that for the purpose of deciding the issue, the Court has to consider the averments made in the plaint and not the averments in the written statement or the defence of the defendants.

5. I have heard learned Advocates for the parties. Perused the record and proceedings.

6. It is seen that the plaintiff and defendant No.1 are sister and brother. According to the plaintiff, her late father was the owner of the property and after his death she became the joint

owner of the property with defendant No.1. It is stated that defendant No.1 behind her back sold the house. He did not give share of Rs.30,00,000/- to her. She has categorically stated that she came to know about the execution of the sale deed and receipt of the said consideration by defendant No.1 in the month of March, 2017. It is seen on perusal of the application that it was not a plain and simple application under Order 7 Rule 11 of the C.P.C. The prayer made in this application was for framing the preliminary issue as to the jurisdiction of the Court to entertain and try the suit on the ground of limitation. The learned Judge has observed that plaint discloses the cause of action and from the date of accrual of the cause of action the suit is within limitation. It is to be noted that the issue of limitation is a mixed question of law and facts. For the purpose of deciding such issue, the plaint has to be read as a whole. The Court has to consider the cause of action pleaded in the plaint. In this case, the plaintiff has pleaded the cause of action. In my view, for the purpose of rejecting the plaint the

Court would be required to record a finding that this cause of action pleaded by the plaintiff is false. In my view, such a finding on the basis of the available material cannot be recorded.

7. In the facts and circumstances, I conclude that there is no substance in this application. The order passed by the learned Judge is in accordance with law.

8. In view of this, revision application stands **dismissed** and disposed of.

JUDGE