



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

CIVIL REVISION APPLICATION NO. 74 OF 2024

MANISHA DILIP KHAIRKAR AND OTHERS

VERSUS

TEJAS VIJAY NAIK AND ANOTHER

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. N. B. Bargat, Advocate for the applicants

CORAM : G. A. SANAP, J.

DATE : JUNE 28, 2024.

1. Heard Mr. N. B. Bargat, learned advocate for the applicants. The respondents, though served, have not appeared.
2. In this application, challenge is to the order dated 29.02.2024 passed by learned Joint Civil Judge, Junior Division, Nagpur, whereby the application (Exh.12) made by the applicant/defendant no.1, under Order VII Rule 11 of the Code of Civil Procedure for rejection of plaint, was rejected.
3. The application was filed contending that the suit was barred by limitation and therefore, it deserves to be rejected. It is stated that the so called cause of action pleaded in the plaint is nothing but a clever drafting to circumvent the provisions of law. The learned Judge of the trial Court, after granting an opportunity of hearing to the parties and considering the matter from all angles, has concluded that

the suit was not barred by limitation.

4. Learned advocate for the applicants submitted that the sale deed executed on 26.05.2011 by the father of the plaintiff, who has been arrayed as defendant no.2 in the suit, was challenged for the first time by this suit filed in 2022. It is stated that the averments made in the plaint itself show that the suit was barred by limitation. Learned advocate for the applicants, relying upon the decision of the Hon'ble Apex Court in *Dahiben .vs. Arvinbhai Kalyanji Bhanusali (Gajra)(D) thru. LRs and others (Civil Appeal No. 9619 of 2019), decided on 09.07.2020*, submitted that on such frivolous plea, the party cannot be allowed to drag a *bona fide* purchaser in litigation. In this case, it is held that if a suit, on plain reading of the plaint, is found to be barred by limitation, then it deserves to be rejected. The Hon'ble Apex Court has held that for the purpose of deciding application under Order VII Rule 11 of CPC, the Court has to examine the plaint and determine as to when the right to sue first accrued to the plaintiff and whether on the assumption of facts, the suit is within time.

5. In my view, the learned Judge of the trial Court has properly appreciated the facts pleaded in the plaint and on doing so has concluded that on the basis of the cause of action pleaded in the plaint, the suit was within limitation. The limitation has been provided under Articles 58 and 59

of the Limitation Act. It is held that in this case, Article 59 would be applicable.

6. I have minutely perused the relevant paragraph 5 of the plaint where the cause of action has been pleaded. It is stated that the plaintiff came to know about the sale deed for the first time in May-2022, when he obtained 7/12 extracts of the suit land. It is undisputed that the plaintiff was not party to the said sale deed. The sale deed was executed by the father/defendant no.2. It is his contention that the property is ancestral property and he has right and share in the property. It is his contention that behind his back, the sale deed was executed.

7. The bundle of facts pleaded in the plaint constitute cause of action. The cause of action has to be ascertained on consideration of the material facts. The limitation has to be reckoned from the date of cause of action, if the case is covered under Article 59 of the Limitation Act. For the purpose of computation of limitation as provided under Article 59, the plaint in entirety has to be taken into consideration. The question of limitation in such a situation could not be said to be a pure question of law. It is a mixed question of law and facts. It needs to be stated that while deciding the application under Order VII Rule 11 CPC, the Court has to examine the plaint and not the averments made in the written statement.

8. In view of the above, I do not see any substance in the application. A well reasoned order does not warrant interference. The Civil Revision Application is accordingly rejected. No order as to the costs.

(G. A. SANAP, J.)

Diwale