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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 532 OF 2024

Usha Vijayendranath Kapil and anrApplicants

Vs.

Siddharth Vijayendranath Kapil and anrRespondents

Mr. A. A. Kumbhakoni, Senior Advocate with Mr. Tejas Deshmukh,
Mr. Ronak Utagikar, Mr. Sagar Karsija for the applicants
Mr. Abhishek Avachat a/w Mr. Ronak Vankalas i/b Mr. Siddhant
Deshpande for the respondents

CORAM : GAURI GODSE, J.

DATE : 16th JULY 2025

ORDER:

1. This Civil Revision Application is filed by defendant no. 1 to challenge the order rejecting the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('CPC').

2. Learned senior counsel for the applicants submits that the suit is filed in 2017, seeking partition and separate possession as well as a declaration that the family arrangement of 2005 is illegal and not binding upon the plaintiff. He submits that the plaint deserves to be rejected on the grounds that it is barred by Order

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II, Rule 2 of the CPC and by limitation. Learned senior counsel further submits that one of the suit properties added in the plaint is a private limited company. He submits that in view of Section 430 of The Companies Act, 2013, Civil Court would not have jurisdiction to try and entertain the suit in respect of a private limited company.

3. To support his submissions regarding the bar under Order II Rule 2 of CPC, learned senior counsel relies upon the plaint in the earlier suit filed by the present plaintiff for a simpliciter injunction, which was withdrawn. To support the objection on the suit being barred by limitation, the relevant clauses in the plaint are relied upon to point out that the plaintiff has pleaded that after the death of the plaintiff's father on 16th May 2005, the plaintiff was ousted and not allowed to use and enjoy the family properties and the family income. He, therefore, submits that even according to the plaintiff, he was ousted after his father died in 2005; hence, the suit filed in 2017 would be barred by limitation. He further submits that, although the suit was filed in 2017, the initial prayer was to permit the plaintiff to file the suit as a pauper. He submits that the

said application was withdrawn. Hence, the suit was registered as Special Suit No. 2449 of 2022. He, therefore, submits that the date of institution of the suit should be considered as 2022. He, thus, submits that on plain reading of the plaint, the suit is barred by limitation. Learned senior counsel, therefore, submits that the cause of action pleaded in the plaint cannot be accepted to bring the suit within limitation. He, therefore, submits that the plaint needs to be rejected at the threshold.

4. I have perused the papers of the Civil Revision Application. I have carefully perused the pleadings in the plaint. The plaintiff has pleaded a cause of action in paragraph 22 of the plaint, contending that the cause of action first arose in November 2015 when the order was passed in the criminal appeal, directing the plaintiff to approach the Civil Court. The plaintiff further pleaded that the cause of action arose again in June 2017, when the plaintiff filed an application to sue as an indigent person.

5. So far as the bar under Order II Rule 2 is concerned, the plaint does not reflect any pleadings regarding the earlier suit. Hence, it was argued on behalf of the applicants that the plaintiff

had suppressed filing of the earlier suit for injunction and its withdrawal. For deciding the application for rejection of the plaint under Order VII Rule 11 of CPC, the Court is required to examine the pleadings in the plaint and the documents relied upon in the plaint. Hence, the issue regarding suppression or bar under Order II Rule 2 cannot be made subject matter of Order VII Rule 11 of CPC for rejecting the plaint at the threshold. These grounds would require examination of the rival pleadings at the time of settlement of issues and in the trial.

6. So far as the objection on suit being barred by limitation is concerned, the pleadings relied upon in paragraph 11 and 12 cannot be read in isolation which refers to the plaintiff's contentions that he was ousted from the family business. A perusal of the pleadings in paragraphs 11 and 12 does not specifically reveal any ouster on the death of father in 2005. The pleadings are general in nature, contending that the plaintiff was not allowed to participate in the transport business. The cause of action pleaded in paragraph 22 of the plaint would therefore be relevant for the purpose of deciding the objection of bar of

limitation under Order VII Rule 11 of CPC. For deciding the prayer for rejecting the plaint at the threshold on the ground that the suit is barred by the law of limitation, the plaint as a whole is required to be seen, and the findings cannot be recorded only by referring to some selective pleadings. It is a well-established legal principle that the power conferred under Order VII Rule 11 of the CPC to terminate a civil action is drastic, and the conditions enumerated under Order VII Rule 11 are required to be strictly adhered to.

7. The learned Trial Court in the impugned order has referred to relevant provisions of Order VII Rule 11 of CPC and, after verifying the pleadings in the plaint, observed that the suit cannot be rejected at the threshold as the pleadings would warrant a full-fledged trial and the plaintiff would be entitled to lead evidence. In view of the specific pleadings in the plaint as referred to in the preceding paragraphs, I do not find any fault in the reasons recorded in the impugned order. Considering the material particulars pleaded in the plaint, the suit would warrant a trial, and the plaintiff would be entitled to lead evidence to support his contentions. The plaint, therefore, cannot be rejected at the

threshold in the facts of the present case as pleaded in the plaint.

8. Civil Revision Application is therefore dismissed.

[GAURI GODSE, J.]