



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.124 OF 2025**

M/s. Mihir Projects and and Anr. ... Applicants
versus
Sandhya Suryawanshi and Ors. ... Respondents

Mr. Saket Mone with Mr. Raghav Taneja, Mr. Devansh Shah i/by Vidhii Partners, for Applicants.

CORAM: N.J.JAMADAR, J.

DATE : 10 MARCH 2025

P.C.

1. Heard the learned Counsel for the Applicants.
2. This Revision Application is directed against an order dated 16 January 2025 passed by the learned Civil Judge, Jr. Division, Pimpri, Pune, whereby an application preferred by the Petitioners – Defendant Nos.1 and 2 for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908, came to be rejected.
3. Respondent No.2 – Defendant No.3, and his family members were the original holders of the land admeasuring 1 H 22 R bearing Survey No.153, Hissa No.1A of Village Wakad. On 17 August 2005, Defendant No.3 had executed an Earnest Note in favour of Ms. Sheetal Tejwani to sell 60R land out of the said land (suit property No.2). As Defendant No.3 refused to perform the contract, Ms. Sheetal Tejwani instituted a suit i.e. Special Civil Suit No.2130 of 2008 before the Civil Court at Pune, for the specific

performance of the contract. The said suit was decreed, and, eventually, in pursuance of the order passed in Special Darkhast No.211 of 2009, the Court Commissioner appointed by the Court executed and registered an Instrument of Sale in favour of Ms. Sheetal Teiwani, on 30 December 2009. Ms. Sheetal, in turn, sold 30R land out of the said land to the Plaintiff under the Sale Deed dated 21 July 2010 (suit property No.1).

4. In the aforesaid backdrop, the Plaintiff instituted the suit with the assertion that Defendant No.3 and rest of the Defendants, despite having lost title over the suit property No.2, executed a Sale Deed in favour of Defendant Nos.1 and 2 on 29 December 2012. The Plaintiff learnt about the same when she obtained certified copy of the Sale Deed on 27 December 2020. Hence, an action for declaration that the Sale Deed dated 29 December 2012 is null and void, non-est and illegal and it does not bind the Plaintiff and the consequential relief of injunction.

5. Mr. Mone, learned Counsel for the Applicants, canvassed a two fold submissions. First, the suit claim has not been correctly valued. The Plaintiff ought to have valued the suit claim and paid the court fees in accordance with Section 6(iv)(ha) of the Maharashtra Court Fees Act, 1959, on the value of the suit property, and not under Section 6(iv)(j) on the premise that the subject matter in dispute is not susceptible of monetary valuation.

6. Second, the suit was clearly barred by limitation as the conveyance

was executed in favour of Defendant Nos.1 and 2 in the year 2012 and a bald assertion was made in the plaint that the Plaintiff learnt about the said Sale Deed in the month of February 2020.

7. On the first count, the position is no longer *res integra*. A Division Bench of this Court in the case of Dilip Khushalchand Jain and Ors. V/s. Hardik Deepakbhai Ramani and Ors.¹ has considered the following question of law :

“What is the court fee payable in regard to a suit for declaration that the sale deed, to which the Plaintiffs are not privy/party is void and not binding on the Plaintiffs, and for consequential relief of injunction.”

And, after an elaborate analysis, answered the Reference to the effect that the Court fee payable in regard to a suit for declaration that the sale deed (to which the Plaintiff is not a party) is not binding on him and for consequential injunction would be governed by Section 6(iv)(j) of the Act, 1959. The Division Bench has, in terms, held that Section 6(iv)(ha) would be applicable only to the Plaintiff who is a party to the sale deed seeking declaration of avoidance of sale deed. It would not be applicable to the Plaintiff who is not party to the instrument seeking declaration of avoidance of sale deed.

8. Mr. Mone endeavoured to draw a distinction where the relief of

1 WP No.8968 of 2018 dt. 5 May 2022

declaration that the instrument is void is sought in addition to the declaration that the sale deed is not binding on the Plaintiff. Since both the reliefs are claimed in the instant suit, the suit claim ought to have been valued under Section 6(iv)(ha) of the Court Fees Act, 1959, urged Mr. Mone.

9. I am unable to persuade myself to agree with the aforesaid submissions of Mr. Mone. The fact remains that the Plaintiff was not party to the instrument which was executed by the vendor of Defendant Nos.1 and 2, who allegedly had lost title in the suit property in view of the decree passed in favour of Ms. Sheetal Tejawani, predecessor in title of the Plaintiff, and the execution of the instrument in Special Darkhast No.211 of 2009.

10. On the aspect of the bar of limitation, Mr. Mone would urge that since the registered instrument operates as a constructive notice and the Defendant Nos.1 and 2 are also in possession of the property, which also amounts to a notice under Section 3 of the Transfer of Property Act, the institution of the suit in the year 2020, is clearly barred by limitation. Reliance was placed on a decision of the Supreme Court in the case of Shri Mukund Bhavan Trust and Ors. V/s. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and Anr.²

11. I have perused the aforesaid judgment. The said decision was rendered in a completely different-fact situation. It is true, where upon a

² Civil Appeal No.14807 of 2024 dt. 20 December 2024

meaningful reading of the plaint, the Court can come to the conclusion that, under the given circumstances, after dissecting the facade of cleaver drafting, the suit is hopelessly barred by limitation, the plaint can be rejected under Order VII Rule 11 of the Code. However, that does not seem to be the case at hand. As noted above, the vendors of Defendant Nos.1 and 2 had purportedly lost title over the suit property on account of a decree passed in Special Civil Suit No.2130 of 2008 and the execution of the instrument pursuant to the directions of the Court in Special Darkhast No.211 of 2009.

12. In the aforesaid view of the matter, the questions as to whether Defendant Nos.1 and 2 are in possession of the suit property and whether the registration of the sale deed in favour of Defendant Nos.1 and 2 by the vendors, after the execution of the conveyance by Sheetal Tejawani in favour of the Plaintiff on 21 July 2010, conveys title in the suit property to the Defendant Nos.1 and 2, are mixed questions of fact and law. It cannot be said that the relief is ex-facie barred by law of limitation.

13. Thus, the learned Civil Judge committed no error in rejecting the application for rejection of the plaint. The Civil Revision Application, thus, stands rejected.

(N.J.JAMADAR, J.)