IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 135 OF 2025

Umesh Jayantilal Mehta and ors. ...Applicants

Versus

Hriday Niraj Mehta and ors. ...Respondents

Mr. Vikas Rathi, for the Applicants.
Mr. Rohan Savant, a/w Amar Parab, i/b Pandya & Poonawala, for Respondent No.1.

CORAM: N. J. JAMADAR, J.
DATED: 1st APRIL, 2025

Order:-

1. Heard the learned Counsel for the parties.

2. This revision is directed against an order dated 19th December, 2024, whereby the Notice of Motion taken out by the petitioner Nos.1 to 4 for rejection of the plaint under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 ("the Code") came to be rejected.

3. Respondent No.1 – plaintiff, is the son of respondent Nos.2 and 3 – defendant Nos.5 and 6. Defendant No.1 is the real brother of defendant No.5. Defendant No.2 is the wife of defendant No.1 and defendant Nos.3 and 4 are the daughters and son of defendant Nos.1 and 2.

4. The plaintiff is a coparcener in a HUF namely; Niraj Jayantilal Mehta – HUF consisting of himself and his parents, being defendant Nos.5 and 6. Defendant Nos.1 and 4 are the members of Umesh Jayantilal Mehta – HUF. Two HUFs jointly owned the flats bearing No.201 and 202 at Silver Solitaire CHS Ltd., Ghatkopar (East) Mumbai ("the suit properties").

5. While the plaintiff was still a minor, a suit bearing Suit No.2283/2011 was filed by the plaintiff, through next friend, and defendant No.3 for herself and as guardian of defendant No.4 against defendant Nos.1, 2, 5 and 6. In the said suit defendant Nos.1 and 5 had made a statement that neither the said HUF nor defendant Nos.1 and 5 had any intention whatsoever to create any third party rights/interest in the suit flats. Eventually, the said suit came to be dismissed for want of prosecution.

6. The plaintiff attained majority in the month of March, 2020. The plaintiff claimed that he learnt that defendant No.1, using his extreme undue influence and dominant position, got defendant No.5, the plaintiff's father, to execute instruments purported to be gift deeds, as *karta* of Niraj Jayatilal Mehta – HUF in respect of suit flats in favour of defendant No.3 alone. Defendant No.1 has played fraud on the members of HUF and got the purported gift deeds executed in favour of defendant No.3 and registered with the Registrar of Assurances on 21st November, 2014. Hence, the suit for declaration that the gift deeds in favour of defendant No.3, purportedly executed by defendant Nos.1 and 5 in the capacity of *karta* of respective HUFs, were void and illegal; defendant Nos.1 and 5 had no authority in law to execute the gift deeds particularly in respect of the interest of the plaintiff, who was then a minor, without obtaining previous permission of the Court. Neither there was any legal necessity. Nor the alienation was for the benefit of the estate of the minor.

7. In the meanwhile, defendant No.3 executed an agreement for sale dated 10th December, 2020 in favour of defendant No.7. Thus, the plaintiff also sought a declaration that the said instrument executed by defendant No.3 in favour of defendant No.7 is void-ab-initio, illegal and not binding on the plaintiff and Niraj Jayantilal Mehta – HUF.

8. Defendant Nos.1 to 4 took out the Notice of Motion contending, *inter alia,* there was bar to the suit under the provisions of Order IX Rule 9 of the Code of Civil Procedure as the earlier Suit No.2283/2011 was dismissed for want of prosecution. Secondly, the suit was also barred by law of limitation as the gift deeds were executed in the year 2014 and the suit came to be instituted in the year 2021. Thirdly, the suit claim was undervalued.

9. By the impugned order, the learned Judge, City Civil Court, was persuaded to reject the Notice of Motion observing, *inter alia,* that the earlier suit was based on a different cause of action and, therefore, the bar under the provisions of Order IX Rule 9 of the Code was not attracted. Secondly, the question of limitation was a mixed question of law and facts and the relief claimed in the suit cannot be said to be *ex facie* barred by law of limitation. Thirdly, though the defendants claimed that the suit claim was undervalued yet the defendants did not specifically spell out as to how the suit claim was undervalued and the court fee was deficit. At any rate, the said issue can be framed and adjudicated at the trial.

10. Mr. Vikas Rathi, the learned Counsel for the petitioners, laid emphasis on the dismissal of Suit No.2283/2011 for want of prosecution by an order dated 10th April, 2017. Taking the Court through the averments in the plaint in the said suit and the reliefs claimed therein and comparing and contrasting the same with the averments and the reliefs claimed in the instant suit, Mr. Rathi would urge that the plaintiff has instituted the suit on the very same cause of action. Since, the first suit was dismissed for want of prosecution under Order IX Rule 8 of the Code, under Rule 9 of Order IX, the plaintiff is precluded from bringing a fresh suit in respect of the same cause of action.

11. Mr. Rohan Savant, the learned Counsel for respondent No.1, countered the submissions on behalf of the applicants. It was urged that by no stretch of imagination the cause of action can be stated to be same. At the time of the institution of the said suit, while the plaintiff was still a minor, through his next friend, there was an apprehension that the defendant Nos.1 and 5, the *kartas* of the respective HUFs may alienate the suit flats and create third party rights therein. A categorical statement was then made on behalf of defendant Nos.1 and 5 that they had no intention to alienate the suit property or create third party rights therein. In the instant case, however, the plaintiff has assailed the gift deeds surreptitiously executed by defendant Nos.1 and 5 in favour of defendant No.3 in the year 2014.

12. Secondly, the bar under Order IX Rule 9 of the Code does not apply to a suit for partition as the right to seek partition is a continuing right and survives till the partition by metes and bounds. To lend support to this submission, Mr. Savant placed reliance on a Division Bench judgment of the Karnataka High Court in the case of ***S. K. Lakshminarasappa, since deceased by his L.Rs., vs. Sri. B. Rudraiah and others***[1]**.**

13. I find substance in the submission of Mr. Savant. Plainly, the cause of action in the instant suit is materially distinct from the cause of action in the previous suit. In fact, the suit flats were purportedly gifted away while the said previous suit was still subjudice. At that stage, the plaintiff, who had sued through his next friend, had no occasion to assail the gift deeds executed in favour of defendant No.3. At any rate, the suit is for enforcing the partition and rights of the plaintiff as a coparcener of HUF. Thus, the dismissal of the previous suit, which was instituted while the plaintiff was a minor, does not constitute a bar for the suit which is based on a materially distinct cause of action.

1 ILR 2012 KAR 4129.

14. The ground of limitation also does not carry much substance. The learned Judge, City Civil Court, was within his rights in recording that the issue of limitation, in the peculiar facts of the case, was a mixed question of facts and law and warranted adjudication at the trial. The reliance by Mr. Savant on the decision of the Supreme Court in the case of ***Mongia Realty and Buildwell Private Limited vs. Manik Sethi***[2] appears well founded.

15. It is also necessary to note that the plaintiff attained majority in the month of March, 2020 and the suit came to be instituted in the year 2021. The plaintiff claimed to have learnt about the execution of the gift deeds in favour of defendant No.3, after attaining the majority. In this view of the matter, the question of limitation is a matter for adjudication at the trial.

16. Lastly, on the aspect of undervaluation of the suit claim, the learned Judge, City Civil Court, correctly observed that the defendants could not demonstrate as to how the suit claim was undervalued. From the perusal of the averments in paragraph 28 of the plaint, it becomes evident that the plaintiff has valued the suit claim on the basis of the value of

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2 (2022) 11 Supreme Court Cases 572.

the suit property shown in the gift deeds and has paid the maximum court-fee of Rs.3,00,000/-. In that view of the matter, the learned Judge, City Civil Court, was justified in recording that, at any rate, the issue of correct valuation could be framed and decided at the trial.

17. A useful reference, in this context, can be made to the decision of the Supreme Court in the case of ***Tara Devi vs. Sri Thakur Radha Krishna Maharaj, through Sebaits Chandeshwar Prasad and Meshwar Prasad and another*[3]*,*** wherein it was enunciated that in a suit for declaration with a consequential relief, the plaintiff is entitled to make his own estimation of the reliefs sought in the plaint and such valuation, both for the purposes of court fee and jurisdiction, has to be ordinarily accepted. It is only in cases where it appears to the court on a consideration of the facts and circumstances of the case that the valuation is arbitrary, unreasonable and the plaint has been demonstratively undervalued, the court can examine the valuation and can revise the same.

18. That does not seem to be the case at hand as the plaintiff has paid the maximum court fee. And that *prima*

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3 (1987) 4 Supreme Court Cases 69.

facie rules out the deliberate undervaluation of the suit claim, with a view to avoid payment of court fee.

19. Resultanly, this Court does not find any justifiable reason to interfere with the impugned order.

20. The application, therefore, stands rejected.

[N. J. JAMADAR, J.]