



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

CIVIL REVISION APPLICATION NO. 133 OF 2023

Ratansing s/o. Laxmansing Bundel and ors

Vs.

Mulchand s/o. Maroti Ramteke and ors.

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

Court's or Judge's Order

Mr. N. R. Bhishikar, Advocate for the applicants.

CORAM : M.W. CHANDWANI, J.

DATE : 07.08.2025.

1. Heard.
2. This Civil Revision Application has been filed against dismissal of the application (Exh. 35) filed by the applicants under Order VII, Rule 11 of the Code of Civil Procedure.
3. The non-applicants herein have filed a suit for simplicitor injunction against the applicants seeking directions for restraining them from entering the suit premises and creating any third party interest. The non-applicants have *inter alia* contended that the applicants herein purchased the suit property which was the subject matter of earlier Special Civil Suit No.20/2008 from the legacy of will executed by defendant Bhauji Sherki. Special Civil Suit No. 20 of 2008 was filed by the non-applicants

for specific performance of contract which came to be decreed. In the appeal filed by the legal representative of Bhauji Sherki, the applicants herein were made a party. It is also alleged in the suit that, the applicants are likely to take possession of the suit property and may change the nature of the suit property.

4. The applicants filed two applications i.e. Exh. 34 and 35 for rejection of the plaint on the ground that plaint does not disclose cause of action and the suit is barred by limitation. The learned Trial Court rejected the applications. Being aggrieved by the said order, the present revision application came to be filed.

5. It appears from the submissions that before the learned Trial Court, the application (Exh. 35) has been filed under Order VII, Rule 11, clause A and B of the Code of Civil Procedure. With the assistance of the learned counsel appearing on behalf of the respective parties, I have gone through the plaint. The suit is for simplicitor injunction for restraining the applicants from entering the suit premises and not to create any third party interest. Para 7 of the plaint depicts that the applicants on 22.06.2023, tried to clear the garbage and tried to sell the suit property to third party and that

particular act of the applicants is shown as the cause of action in the suit. Therefore, there is no substance in the arguments of learned counsel appearing for the applicants that they purchased the property on 22.10.2018 and the suit ought to have been filed within three years from the date of sale deed much less from 04.02.2019 when they applied before the First Appellate Court to implead the present applicant as a party in the appeal filed by the legal heirs of Bhauji Sherki. Though, the non-applicants became aware of the sale deed in the year 2019, but the present suit is not for cancellation of the sale deed, it is for injunction. As stated above, the cause of action for such injunction has been mentioned in para 7 of the plaint. Therefore, no interference is required in the finding of the Trial Court stating that considering the averments in the plaint, the suit cannot be said to be barred by the law of limitation.

6. Mr. Bhisikar, learned counsel appearing on behalf of the applicant submitted that there is no cause of action to file the suit, since the possession is with the applicant in wake of the sale deed dated 22.10.2018 and more particularly, when the earlier suit filed by the present non-applicants against Bhauji Sherki was for specific performance of contract including possession.

7. Be that as it may, whether the contentions made in the plaint are right or wrong has to be gone into during the course of the trial. While considering the application for rejection of plaint, only the contentions made in the plaint have to be considered presuming that what has been alleged in the plaint is correct. If inspite of that, the suit cannot proceed further for the reasons mentioned in Order VII, Rule 11 of the Code of Civil Procedure, only then the plaint can be rejected. That apart, there will be various contingencies as to who is in possession despite of filing of the suit by the non-applicants against the Bhauji Sherki and sale deed executed in favour of the applicants which can be crystallized during trial. Therefore, no interference is required in the findings of learned Trial Court.

8. Accordingly, the Civil Revision Application is **dismissed**.

(M.W. CHANDWANI, J.)