



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

SECOND APPEAL NO. 48/2025.

1.Prabhunath Ramnaginsingh Kakan
Age : 67 years, Occupation Business,
Resident of Aathwadi Bazar Chowk,
Deoli, Tahsil Deoli, District Wardha.

2.Hansraj Ramnaginsingh Kakan,
Age : 60 years, Occupation Business,
Resident of Nagar Parishad Colony,
Deoli, Tahsil Deoli, District Wardha.

3.Jaswatsingh Ramnaginsingh Kakan
Age : 59 years, Occupation Business,
Resident of Manewada Square, Nagpur,
Tahsil and District Nagpur.

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APPELLANT.
Ori. Plaintiff.

VERSUS

1.Girish Madanrao Kashikar,
Age : 60, Occupation – Business,

2.Jayashri Girish Kashikar,
Age : 55, Occupation – Housewife,

Both residents of Nalwadi, Wardha,
Rahsil and District Wardha.

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RESPONDENTS.
Ori. Defendant.

Shri S.B. Gandhe, Advocate for Appellants.

CORAM : ROHIT W. JOSHI, J.

DATE : APRIL 24, 2025.

Heard.

2. This appeal is preferred by the original plaintiffs being aggrieved by the order of rejection of plaint dated 04.09.2023, passed on an application Exh.10 in Regular Civil Suit No.146/2023, and the subsequent judgment dated 18.09.2024 passed by the learned District Judge, Wardha dismissing their appeal being Regular Civil Appeal No.15/2023 filed against the said order of rejection of plaint.

3. Plaintiffs have filed a suit challenging the sale deed dated 03.09.1998 executed by their father in favour of defendant no.1. It is their contention that they were not aware about the sale deed executed by their father and that they came to know about the same for the first time in the year 2016, when they obtained some revenue record in relation to the suit property. They state that after getting knowledge about the said sale deed executed by their father, they challenged

mutation entry recorded in the name of defendant no.1 by filing a Revenue Appeal before the learned Sub Divisional Officer, which came to be allowed vide order dated 15.11.2018. They further state that the defendant no.1 challenged the said order dated 15.11.2018 by filing appeal before the Additional Collector, and the said appeal was allowed on 17.12.2019. According to plaintiffs, they preferred revision before the Commissioner, which was dismissed on 27.01.2023.

4. It is contention of plaintiffs that in view of the order dated 27.01.2023, they realized that the competent forum for granting the relief of cancellation of sale deed was Civil Court. In this backdrop the plaintiffs have filed a suit challenging the sale deed bearing Regular Civil Suit No.146/2023 on 12.04.2023.

5. The defendants have filed an application seeking rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure on the ground that the suit was barred by limitation, as also on the ground that appropriate court fee was not paid as per market value of the property.

6. The learned trial Court accepted the contentions raised by the defendants with respect to suit being barred by limitation, and has accordingly rejected the plaint vide order dated 04.09.2023. The learned First Appellate Court concurred with the findings recorded by the learned trial Court and dismissed the appeal.

7. The principal contention raised by the learned Counsel for the appellants is that limitation is a mixed question of law and facts, and therefore, the Courts were not justified in rejecting the plaint on the ground of limitation. It is contended that the application under Order VII Rule 7 of the Code of Civil Procedure can be adjudicated treating the plaint averments to be true and correct and veracity thereof could not have been gone into while deciding the application under Order VII Rule 11. Apart from this, the learned Counsel for the appellants contends that the period spent in prosecuting revenue proceedings ought to have been excluded in view of Section 14 of the Limitation Act.

7. Having perused the record of the case with the able

assistance of the learned Counsel for the appellants, I am unable to find any fault with the reasons recorded by the Courts below. It is true that while adjudicating an application under Order VII Rule 11 of the Code, the plaint averments are to be taken at their face value. In case at hand, it is apparent from reading of the plaint that sale deed is executed in the year 1988, and that the plaintiffs had knowledge about the said sale deed from the year 2016 itself. It is also not in dispute that the suit is filed after a period of 7 years therefrom, i.e. in the year 2023. In that view of the matter, the suit was apparently barred by limitation in the light of plaint averments.

8. As regards Section 14 of the Limitation Act, the period spent in prosecuting revenue proceedings with respect of mutation entries cannot be excluded for the purpose of computation of limitation under Section 14 of the Limitation Act. The provision specifically uses the words “civil proceeding” as also words “Court of first instance or of appeal or revision”. The second contention with respect of Section 14 of the Limitation Act is, therefore, liable to be rejected.

9. In the light of aforesaid, I find that no substantial question of law arises for adjudication of present Second Appeal, the same is therefore, dismissed. No costs.

JUDGE