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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.367 OF 2023

Prasad Nandkumar Deshmukh .. Applicant

Versus

Dhaku Navlu Aukirkar and Ors. .. Respondents

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- Mr. Vinaykumar Khatu a/w. Ms. Sneha Thakre, Advocate for Applicant
 - Mr. Dileep Satale, Advocate for Respondent No.1.
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CORAM : MILIND N. JADHAV, J.
RESERVED ON : JULY 09, 2024
PRONOUNCED ON : SEPTEMBER 19, 2024

JUDGMENT:

1. The present Civil Revision Application (CRA) impugns order dated 10.04.2023 passed in Regular Civil Suit No.25 of 2020 by the Trial Court while rejecting Application filed below Exhibit-22. Application below Exhibit-22 is filed by Defendant No.9 in Suit proceedings under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short “CPC”) seeking dismissal of Suit and rejection of the Suit plaint. Parties shall be referred to as Plaintiff, Defendant Nos. 1 to 8 and Defendant No. 9 for convenience.

2. Briefly stated, Suit is filed in the year 2020 for specific performance of contract / agreement of the year 1989, cancellation of registered sale deed dated 25.02.2011 and declaration of title. There are three principal prayers prayed for by the Plaintiff in the Suit plaint.

The declaratory relief is for declaring Plaintiff as owner of the Suit property. Relief of specific performance of agreement is of an agreement for sale of 1989 executed between predecessor-in-title of Defendant Nos. 1 to 8 and Plaintiff. Relief for cancellation of registered sale deed is of sale deed executed between Defendant Nos. 1 to 8 with Defendant No.9. Suit is filed in the year 2020. Defendant No. 9 is in possession of the suit property since 2011.

3. Defendant No.9 filed Application below Order VII Rule 11 of the CPC and suffered rejection. He is the Revision Applicant before me. Learned Advocate for Applicant would submit that on the face of record, facts of the present case are such that the suit is not maintainable as it is hit by the bar of limitation. He would submit that no declaratory relief can be passed in favour of Plaintiff on the basis of the prayers prayed for. He would submit that Plaintiff seeks specific performance of agreement of the year 1989 for the first time in the year 2020. He would next submit that Plaintiff seeks cancellation of a registered sale deed between Defendant Nos. 1 to 8 on the one side and Defendant No. 9. He would submit that even if it is assumed to be true that there is a purported Agreement between Plaintiff and the predecessor-in-title of Defendant Nos. 1 to 8 in the year 1989, seeking specific performance of that Agreement in the year 2020 is at a much belated stage. He would submit that Defendants deny the alleged Agreement of the year 1989 which on the face of record is undated,

unstamped and unregistered.

3.1. He would draw my attention to the copy of Agreement appended at Exhibit-A to CRA and would contend that the said Agreement does not record handing over possession of the suit property to Plaintiff nor it is witnessed by any person. He would draw my attention to the fact that the said Agreement incorporates a mobile number of the party, when admittedly in the year 1989 mobile services were not in vogue in the first place itself. He would therefore contend that the said Agreement is sham, bogus and a fabricated Agreement, manufactured by Plaintiff to stake a false claim to the suit property. He would submit that assuming for the sake of argument that such an Agreement was executed, the Vendors in the said Agreement namely Pandurang and Chintamani could never have been able to sell the entire property to Plaintiff since there were several coparceners who were entitled to their share in the suit property and in the absence of consent of the remaining five coparceners, such an Agreement would have been null and void.

3.2. He would next submit that Suit property is amenable to the provisions of the Maharashtra Tenancy and Agricultural Land Act, 1948 (for short “**the said Act**”) and hence the bar under Section 43A of the said Act for sale / transfer would apply, as permission for such sale from the Competent Authority i.e. Collector is a mandatory

requirement. He would vehemently submit that if it is Plaintiff's case that in the year 1989 such an unstamped and unregistered Agreement for sale was executed and monies were paid to the predecessor-in-title of Defendant Nos. 1 to 8, then nothing prevented the Plaintiff from seeking mutation of his name in the revenue record of the Suit property. He would vehemently submit that one of the coparceners who executed the purported Agreement in 1989 namely Pandurang D. Pachadkar expired on 26.10.1996 pursuant to which vide Mutation Entry No.1030 names of his legal heirs were brought on record. He would submit that had Plaintiff being entitled to the Suit property, he would have objected to the said mutation entry No.1030, however there has been no objection raised to the same whatsoever since 1996.

3.3. In the above backdrop he would submit that Defendant Nos. 1 to 8 entered into a registered Agreement for sale dated 20.01.2011 to sell the property to Defendant No. 9. He would submit that on 24.02.2011, Defendant Nos. 1 to 8 obtained permission for sale of the said property from the Competent Authority i.e. SDO, Mahad, pursuant to which, by sale deed dated 25.02.2011, Suit property was sold to Defendant No.1 for lawful consideration. He would submit that said sale deed / conveyance was registered on 28.02.2011. He would submit that pursuant thereto, name of Defendant No. 9 was mutated in the ownership column in the revenue record as holder of the Suit property. He would submit that it is only some time in the year 2019

that Plaintiff and his son started creating a nuisance in the Suit property on the premise that the predecessor-in-title of Defendant Nos. 1 to 8 sold the suit property to Plaintiff in 1989 and in view thereof Defendant No. 9 filed a police complaint.

3.4. In the year 2019, Plaintiff filed ALT Case No.13 of 2019 against Defendant Nos. 1 to 8 and Defendant No. 9 under Section 70 (b) of the said Act. By order dated 12.05.2020, the Competent Authority i.e. Tahsildar held that Plaintiff failed to produce documentary evidence with respect to substantiating his claim to entitlement of the Suit property and rejected Plaintiff's challenge in the ALT case. The said order dated 12.05.2020 is not challenged by Plaintiff till date, instead the Plaintiff has filed the present Suit in the year 2020 seeking declaration of ownership in respect of Suit property as also specific performance of Agreement of the year 1989 and for cancellation of registered sale deed in favour of Defendant No. 9.

3.5. In the above backdrop, Mr. Khatu would contend that Application filed by Defendant No.9 seeking rejection of Suit plaint ought to have been considered since present Suit is filed in the year 2020 and reliefs prayed for therein are clearly barred by the law of limitation. He would therefore urge the Court to interfere with the impugned order dated 10.04.2023 and allow the present CRA.

4. *Per Contra*, Mr. Satale, learned Advocate appearing for Plaintiff who is Respondent No.1 before me, would contend that the issue of limitation cannot bar the Plaintiff to file the present Suit in the year 2020 since it is filed due to rejection of Plaintiff's ALT Case by the Competent Authority in 2020 itself. He would submit that suit is filed within period of three years from the date of rejection of Plaintiff's ALT case and therefore it is within time. In the alternate, he would submit that issue of limitation is a mixed question of law and facts and hence Suit cannot be rejected on this ground without Plaintiff being given an opportunity to lead evidence on triable issues raised in the suit plaint by Plaintiff. He would submit that on the issue of limitation various Courts have held that the same has to be decided only after leading of evidence by parties and therefore the impugned order correctly holds that the issue of limitation is a mixed question of fact and law and will have to be decided on its own merits. Hence he would submit that the impugned order be sustained.

5. I have heard Mr. Khatu, learned Advocate for the Applicant and Mr. Satale, learned Advocate for Respondents and with their able assistance perused the record and pleadings of the case. Submissions made by the learned Advocates have received due consideration of the Court.

6. Impugned order dated 10.04.2023 proceeds on the premise that the issue of limitation cannot be decided *prima facie* without going into the merits of the case. It refers to two decisions; one of the Supreme Court in the case of **Ganesh Keshav Patole Vs. Sheetal Sikhandar Darne**¹ and a decision of this Court in the case of **K.S. Dhondy Vs. Her Majesty Queen of Netherlands & Anr**² wherein Courts have held that the issue of limitation is required to be decided after evidence is led by the parties and a plaint cannot be rejected on the ground of limitation without the same being tried by the Court.

7. From the above, it is gathered that according to the learned Trial Court, in the facts of this case, issue of limitation is required to be tried. In that view of the matter, plaint will have to be read in order to understand the case of the Plaintiff *qua* the reliefs prayed for by him. Plaintiff has filed RCS No. 25/2020 seeking relief of declaration, decree for specific performance, injunction and for cancellation of sale deed dated 25.02.2011. In this Suit filed in the year 2020, Plaintiff claims to have acquired ownership right in the suit property pursuant to an undated, unstamped and unregistered agreement for sale of the year 1989 executed by him and purportedly by the predecessor-in-title of Defendant Nos. 1 to 8. As delineated while narrating the facts and submissions, it is seen that the purported agreement of 1989 mentions a mobile phone number. In the year 1989, mobile phones were neither

1 2018 SCC online Bom 649

2 (2013) 4 MH.L.J. 64

invented nor available in India and therefore the agreement itself raises a grave doubt and suspicion. That apart it is seen that the present suit is filed after almost 31 years after the said agreement of 1989 on the basis of which Plaintiff claims to have acquired ownership in the suit property. This fact is *prima facie* evident on reading of the suit plaint.

8. Next it is seen that Plaintiff has challenged the registered sale deed / conveyance executed between Defendant Nos. 1 to 8 and Defendant No. 9 in respect of the suit property which is registered on 28.02.2011. What is crucial to be noted is that the Competent Authority has given its permission for this sale pursuant to application made by vendors under the provisions of the said Act seeking permission under Section 43-A which is mandated under the said Act. If the same yardstick is to be applied to the alleged agreement of 1989 between Plaintiff and predecessor-in-title of Defendant Nos. 1 to 8, then the alleged agreement does not refer to any such permission. It also does not refer to giving of possession of the suit property. The agreement is part of the suit plaint in respect of which a declaratory relief is sought by Plaintiff. It is invoked by Plaintiff for the first time after 31 years in the year 2020. It is Plaintiff's case that he has paid the entire consideration to his vendor under the said agreement. If that be the case, then silence of the Plaintiff from 1989 to 2020 speaks volumes of his conduct. Not once has the Plaintiff attempted to seek

mutation of his name in respect of the suit property from 1989 onwards. Even in the interregnum sometime in 1996, one of the original owner of the property i.e. predecessor-in-title of Defendant Nos. 1 to 8 expired pursuant to which mutation entry No. 1030 was effected. Plaintiff remained conspicuously silent and has challenged the said mutation entry in the year 2019 by filing the ALT case. It is in the year 2019 that Plaintiff and his son attempted to create nuisance in suit property. Plaintiff filed ALT Case No. 13/2019 against Defendant Nos. 1 to 8 and Revision Application under Section 70(b) of the said Act. ALT Case filed by Plaintiff is dismissed comprehensively by order dated 12.05.2020 holding that Plaintiff failed to produce documentary evidence to substantiate his right and claim in the suit property. It is only thereafter that present suit is filed by stating that rejection of the ALT case results in cause of action to file the present suit. However if that is to be the cause of action according to Plaintiff, then reliefs prayed for by the Plaintiff in the suit plaint are completely incongruous with the said cause of action. After 31 years Plaintiff is seeking specific performance of an undated, unstamped and unregistered agreement of the year 1989. This itself on the face of record is clearly barred by the law of limitation. Filing and rejection of the ALT case cannot give to the Plaintiff any cause of action as the said order is an appealable order before the first appellate authority.

9. Next relief prayed for by Plaintiff is for setting aside the registered conveyance / sale deed dated 28.02.2011 between Defendants. Once again on the face of record, filing of suit plaint in the year 2020 is clearly barred by the law of limitation. Thus on the basis of Plaintiff's own pleadings in the suit plaint itself and looking to the prayers, suit is clearly barred by the law of limitation.

10. This Court in its judgment dated 09.08.2024 passed in Civil Revision Application No. 75 of 2024 (Jayesh Dinesh Kadam & Anr. Vs. Andrew David Fernandes & Ors) in paragraph Nos. 19 and 20 in the facts therein which were somewhat similar to the present case has held as under:-

"19. It is predominantly observed by me in many similar proceedings that successors-in-title from the subsequent generations are filing similar Suits as is the case of the Plaintiff to challenge vintage registered sale deeds. These vintage registered sale deeds are executed by the predecessors-in-title of the Plaintiffs who file such Suits. It is seen that considering that property prices, rather land prices have increased manifold and have reached exceedingly high proportions, litigants like the Plaintiff file such Suits to create nuisance to the Defendants - Developers who are developing the property with the sole intention and aim of attempting to extract an extra pound of flesh by resorting to filing Suit proceedings on some pretext or the other. The sole intention which drives such litigants who approach the Civil Courts is to extract a deal for the nuisance and delay that they would cause in development, thereby affecting the rights of the flat purchasers in the development and in turn the subsequent purchasers and the developer. Such is the case herein. It is an admitted position that when admittedly the Plaintiff has been residing on a portion of the larger Suit property and similarly when the successors-in-title of the remaining five sons of late Domingo Fernandes are also residing on a portion of the larger Suit property in their respective residences/bungalows, the Plaintiff cannot plead and state that he got knowledge about the twin registered sale deeds of 1969 and 2008 for the first time in the year 2022. In these facts, the above defence of gaining knowledge is not at all open to the Plaintiff.

20. This is a clear case where the Plaintiff by virtue of clever drafting is attempting to overcome the bar of limitation. It is not the Defendants' case that they are developing the larger Suit property just now. Development has

been carried out by them over a period of time and is continuing. Hence, the filing of the Suit plaint by Plaintiff is nothing but a vexatious and extortionist claim by the Plaintiff and such claims are to be nipped in the bud at the threshold itself. If this is not done by the Court of law, litigants like the Plaintiff will end up taking the law into their hands. That is the precise reason for the existence of provisions of Order VII Rule 11 in the CPC. "

10.1. What is stated herein above would apply to the present case also. Here is the Plaintiff who has admittedly remained silent for the past 31 years. The suit land / property is amenable to the provisions of the said Act. Without taking recourse to the provisions of the said Act, Plaintiff claims ownership on the basis of an purported undated, unstamped and unregistered agreement of 1989 and seeks specific performance of the said agreement in the year 2020. It is seen that prayer clause (a) of the plaint seeks declaration of ownership. It is a composite prayer where Plaintiff seeks a prayer of injunction coupled with a declaratory relief. Both these reliefs are compositely sought on the basis of the 1989 agreement. In prayer clause (b), Plaintiff seeks specific performance of agreement of 1989 whereas in prayer clause (c), Plaintiff seeks declaration that the registered deed of conveyance of 28.02.2011 between Defendants is not binding on Plaintiff. Prayer clause (d) is in respect of seeking direction to Defendant Nos. 1 to 8 to enforce the agreement of 1989 in favour of Plaintiff. Once the suit plaint and prayers are perused, there is no reason for the learned Trial Court to come to the conclusion that in these facts limitation is required to be proved by evidence. Such clear facts as clear as daylight

emanate from the suit plaint itself and they do not leave any room for doubt. Suit plaint is thus clearly barred by the law of limitation on these facts and is hit by the provisions of O. VII R. 11 of CPC. Hence the proposition that issue of limitation is required to be decided only after evidence is led by the parties cannot be an absolute proposition which can be applied to the facts of this case. It is seen that ground of limitation is itself a mixed question of law and fact. In the given case when the facts are crystal clear so as to ascertain and determine the availability of right to a litigant, there is no reason for the Court to then conclude that issue of limitation cannot be decided without going into the merits of the case. In every case that is filed, objection raised under O. VII, R. 11 has to be decided on the facts of the case pleaded in the suit plaint, cause of action and reliefs sought for. It cannot be stated by the Court that issue of limitation raised by Defendant cannot be decided at an early stage since it is a mixed question of fact and law as is done in the present case. If what is countenanced by the learned Trial Court is accepted, then provisions of O. VII, R. 11 of the CPC will be rendered completely redundant. There will never be an effective check on litigants like the Plaintiff approaching the Court at any point of time without adhering to limitation. The challenge to the registered document after a long delay or to seek declaratory relief in terms of a document executed several decades ago cannot be permitted. Hence, in the present case filing of the suit plaint by Plaintiff seeking the

desired reliefs which have been delineated herein above is after much delay. Suit plaint is clearly hit by the provisions of O. VII R. 11(d) of the CPC. Once the Plaintiff claims to be an agricultural tenant by virtue of the 1989 agreement with the predecessor-in-title of Defendant Nos. 1 to 8, then he cannot claim declaratory ownership of the suit property by taking a diametrically opposite plea. In any event on a *prima facie* reading of the suit plaint, it is seen that the case of Plaintiff does not meet the test required under O. VII R. 11 of the CPC.

11. In view of my above observations and findings, the impugned order dated 10.04.2023 passed below Exh. 22 deserves to be interfered with. It is therefore quashed and set aside. Resultantly the Application filed by Defendant under O. VII R. 11 of the CPC below Exh. 22 stands allowed. In view of this, RCS No.25/2020 filed by the Plaintiff stands rejected.

12. Learned Trial Court shall take cognizance of a server copy of this order and pass appropriate orders.

13. Civil Revision Application is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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