

MHRG040015042023 	R. C. S. No. 157/2023 Laxmi Bhagat & Ors. Vs Hiru Gadkari & Ors.
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Order below Exh. 32

01. Perused application and say. Heard Ld. Advocate for both parties. This application is filed by defendant no.2 & 3 under Order 7 Rule 11 (d) of CPC for rejection of plaint on the ground that the suit is barred by law of limitation.

02. This suit is filed by plaintiffs for declaration and cancellation of Will and for permanent injunction. It is contended by defendant no.2 & 3 that the plaintiffs pleaded in plaint para 10 & 21 that they received knowledge of Will for the first time on 28.08.2019 from the complaint case no.250/2019 pending before Tahasildar, Panvel. It is contended by defendants that as per the provision of Article 58 and 59 of Limitation Act, the limitation for filing such type of suit is 3 years. They contended that the suit ought to have been filed before 28.08.2022 but the suit is filed on 13.04.2023 i.e. after 3 years from 29.08.2019. Hence, they contended that the suit is barred by the law of limitation and hence prayed for rejection of plaint.

03. Plaintiffs filed their say and strongly opposed the application. It is contended by plaintiffs that they got knowledge of the Will on 29.08.2019 from the complaint case no.53/2019 pending before Tahasildar, Panvel. They contended that due to Covid-19 pandemic, Hon'ble Supreme Court excluded the period from

15.03.2020 to 28.02.2022 for the purpose of limitation and therefore, after excluding this period, they filed suit within limitation. Hence, they prayed for rejection of application.

04. Perusal of record shows that this suit is filed by the plaintiffs for declaration that the Will dated 07.04.2007 is illegal and not binding on them and for cancellation of said Will. Perusal of plaint shows that it is specifically mentioned in plaint para 7 that defendant no.1 filed complaint case no.53/2019 before Tahasildar, Panvel challenging mutation entry no.714 and in para 10 it is mentioned that when plaintiffs appeared in aforesaid case on 29.08.2019, they came to know for the first time about the execution of Will dated 07.04.2007. Thus, there is no dispute about the starting date of the limitation. The limitation start from 29.08.2019 the plaintiffs filed copy of order passed by Hon'ble Supreme Court dated 10.01.2022 in Miscellaneous Application No.21 of 2022 in Miscellaneous Application No.665 of 2021 in Suo Moto Writ Petition (C)No.03 of 2023. It is specifically directed by Hon'ble Supreme Court in this order that due to Covid-19 pandemic the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all Judicial or Quasi-Judicial proceedings. It is also directed that in cases where the limitation would have expired during the period from 15.03.2020 till 28.02.2022, all persons shall have a limitation period of 90 days from 01.03.2022 and in the event the actual balance period of limitation remaining, with effect from

01.03.2022 is greater than 90 days, that longer period shall apply.

05. In the case in hand the limitation start from the date of first knowledge i.e. from 29.08.2019. After excluding the period from 15.03.2020 till 28.02.2022, the period of limitation remain with plaintiffs is greater than 90 days and therefore that long period will apply in calculation of period of limitation. As such the plaintiffs are having period of limitation up to 16.08.2024 to file the suit. The suit is filed on 06.04.2023 i.e. within limitation. The defendants relied on several authorities of Hon'ble Supreme Court and High Court. It is held in those authorities that the plaint shall be rejected under Order 7 Rule 11 (d) of the CPC if barred by law of limitation and it can be done at any stage. However, the present suit is filed within limitation and therefore the aforesaid authorities cited by defendants are not applicable here. The plaint cannot be rejected under Order 7 Rule 11(d) of CPC as it is filed within limitation. Hence, I passed following order.

Order

1. The application is rejected.

Date :14/11/2025
Place :Panvel

(R. Y. Khandare)
5th Jt. Civil Judge, Sr. Div,
Panvel.