

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 256 OF 2022

Pilaji Sursinh Jadhavrao

Applicant (Orig.
.. Defendant No.4)

Versus

Amarsinh Jotyajirao Jadhavrao and Ors.

.. Respondents

WITH

CIVIL REVISION APPLICATION NO. 296 OF 2022

Sursinh Jotyajirao Jadhavrao

Applicant (Orig.
.. Defendant No.1)

Versus

Amarsinh Jotyajirao Jadhavrao and Ors.

.. Respondents

.....

- Mr. S.G. Karandikar a/w. Mr. Abhijit P. Kulkarni, Mr. Abhishekh Roy and Mr. Gourav Shahane, Advocates for Applicants.

.....

CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 11, 2024.

P.C.:

- 1.** Heard Mr. Karandikar, learned Advocate for Applicants.
- 2.** This is a group of two Civil Revision Applications (for short “CRAs”). Common order is passed in both the CRAs, as both orders which are impugned in the two CRAs are passed on the same date and they both are absolutely identical.
- 3.** CRA No.256 of 2022 is filed by Original Defendant No.4 whereas CRA No.296 of 2022 is filed by Original Defendant No.1. Both Defendants filed Application below Order VII Rule 11 of the Code

of Civil Procedure, 1908 (for short “**CPC**”) seeking rejection of the Suit
plaint for want of cause of action as also on the ground of limitation.

4. Mr. Karandikar, learned Advocate appearing for the Defendants alongwith Mr. Abhijit Kulkarni who are the Revision Applicants before me would at the outset draw my attention to paragraph No.4 of the Suit plaint which, *inter alia*, refers to the specific averment of the Plaintiff acknowledging partition of the Joint Hindu Family property i.e. the Suit property in the year 1948 effected by the father of the Plaintiff, Defendant No.1 (Plaintiff's brother) and their parents. It is specifically stated that pursuant to this partition, properties stood separated.

5. He would next draw my attention to paragraph No.13 of the Suit plaint stating that it is merely stated therein by the Plaintiff that cause of action for the present Suit arose in the year 2016 and the same is continuing and recurring. For convenience, paragraph No.13 is reproduced below in order to have a better understanding of the cause of action:-

“13. Plaintiff submits that cause of action for the present suit arose since the year 2016 and the same is continuing and recurring.”

6. Suit properties are described in paragraph No.1 of the Suit plaint. Learned Trial Court while considering the Application filed below Order VII Rule 11 of the CPC has opined in paragraph No.20 of

the impugned order that from perusal of the plaint and documents filed alongwith it, it appears that Plaintiff has disclosed cause of action for Suit and the Suit *prima facie* does not appear to be barred by any law. This opinion and conclusion drawn by the learned Trial Court is apparently on the basis of the averment made in paragraph No.13 which is reproduced herein above.

7. Mr. Karandikar, learned Advocate has drawn my attention to certain facts which are material. He would submit that Plaintiff and Defendant No.1 are siblings whereas Defendant No.4 is the nephew of Plaintiff and Defendant No.1. He would submit that father of Plaintiff and Defendant No.1 expired in the year 1971 and their mother expired in 1993. He would submit that pursuant to their demise their separate property has devolved upon Defendant No.4 by virtue of bequeathal through their respective Wills. Thus, what is submitted by him is that properties of the parents of Plaintiff and Defendant No.1 are bequeathed to their grandson. This position has prevailed from 1971 and 1993 onwards until the present Suit is filed by the Plaintiff in January 2019. Suit properties are in possession of Defendant No.1 and Defendant No.4 respectively and have remained in their possession all throughout. Mutation of names of Defendant No.1 and Defendant No.4 in the Suit properties as holders of the said properties was already on record which was never objected by Plaintiff.

8. Mr. Karandikar would inform the Court that some of the property out of the Suit properties has already stood acquired for the purpose of 'Forest' almost 30 years ago and they have already been parted with by the Defendants and they have received compensation for the same being the owners. He would submit that in these facts there is absolutely no relevance of the date of cause of action stated in paragraph No.13 of the Suit plaint to the reliefs prayed for. He would submit that the said date is only stated to bring the Suit within limitation since the Suit is instituted in January 2019. Perusing the Suit plaint is one of the principal norm required to be undertaken by the Court while dealing with an Application filed under Order VII Rule 11 of the CPC. It is clear that the cause of action is insufficient, inadequate and as vague as possible. I am inclined to accept the submissions made by Mr. Karandikar that by the said paragraph No.13 of the Suit plaint, the cause of action is introduced to merely bring the Suit within limitation. This is called clever drafting. In that view of the matter, the findings arrived at in paragraph No.20 of the impugned order dated 15.12.2021 in my opinion are clearly unsustainable.

9. An arguable case has therefore been made out by Mr. Karandikar for issuance of notice and immediate stay of the impugned order dated 15.12.2021.

10. Hence, issue notice to Respondents. Humdast permitted.

11. In addition to Court notice, Applicants are permitted to serve a copy of the CRAs and this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate Affidavit of service with tangible proof thereof on or before the next date.

12. After receiving notice, Respondents are directed to take cognizance of this order and file their Affidavit-in-Reply on or before the next date, if so desired.

13. It is clarified that, both CRAs shall be disposed of on the next adjourned date at the stage of admission itself after hearing the parties.

14. Respondents are directed to remain present in Court on the next adjourned date either by themselves or through Advocate.

15. In the meanwhile, the proceedings in the Suit before the learned Trial Court shall stand stayed until the present CRAs are determined by this Court.

16. Stand over to **25th September 2024.**

[MILIND N. JADHAV, J.]

Ajay

AJAY
TRAMBAK
UGALMUGALE
Digitally signed by
AJAY TRAMBAK
UGALMUGALE
Date: 2024.09.11
14:35:43 +0530