

**HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE**  
**BEFORE HON. SHRI JUSTICE ALOK VERMA,J**

**C.R. No.194/2014**

**M/s Reva Associates and another**

**Vs.**

**Sarjubai and others**

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Shri R.S. Chhabra, learned counsel for the applicants.

None for the respondents after service of SPC to the respondents.

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**ORDER**

**(Passed on 26/07/2016)**

This civil revision is directed against the order passed by the learned Civil Judge Class- I, Sanwer, District-Indore in Civil Suit No.01-A/2014 whereby the learned Civil Judge dismissed an application filed under Order 7 Rule 11 CPC.

2. The relevant facts are that the plaintiffs are legal representatives of deceased-Narayansingh, who died on 14.09.2010. During his lifetime deceased - Narayansingh executed a sale deed in favour of applicant No.1- M/s Reva Associates in respect of suit property. After death of said Narayansingh, the plaintiffs filed the present suit on 09.01.2014 and prayed cancellation of sale deed in respect of share of the plaintiffs, as according to the plaintiffs, the suit property is an ancestral property, which was recorded in name of late Narayansingh being

head and karta of the family. It is further averted in the plaint that plaintiffs remained in possession of the suit property and never parted possession even after execution of sale deed by Narayansingh.

3. The present applicants filed an application under Order 7 rule 11 CPC on the ground that the plaintiffs had not impleaded all the legal representatives of deceased- Narayansingh, and therefore, the suit suffers from non-joinder of necessary parties and as such the suit is not maintainable. The second ground taken by the applicants was that the suit filed by the plaintiffs is barred by limitation, and therefore, suit is not maintainable.

4. The respondents opposed the application on the ground that they are in possession of the suit property and under Article 109 of Limitation Act, the limitation prescribed for the suits filed by Hindu governed by Mitakshara law to set aside his father's alienation of ancestral property.

5. Before the trial court, the applicants relied on judgment of Hon'ble Apex Court in case of **T. Arivendam vs. Satyapal and others; 1977 (4) SCC 467** and **Church of Charitable Trust vs. Punniman Education Trust; 2012 (8) SCC 706** in which it was held that when a suit is filed to harass the defendant, such suit should be dismissed under Order 7 Rule 11. However, the learned

trial court opined that the suit was not filed merely to harass the defendant and similarly, the applicants also cited judgment of Hon'ble Apex Court in case of **Veena Murlidharan Hemdev and others vs. Kanhaiyalal Lokram Hemdev and others; (1999) 5 SCC 222.**

6. Further, the applicants also relied on Article 59 of Limitation Act where according to them for cancellation of such sale deed, limitation prescribed is 3 years.

7. The learned trial court after taking into consideration the case law produced by the applicants and also relied on case of judgment of Bombay High Court in case of **Chintaman vs. Bhagwan; AIR 1928 Bombay 383** which was related to Limitation Act 1908 and the trial court held that under Article 126 of old act where the possession is not transferred as averted by the plaintiffs in the plaint, limitation prescribed is 6 years, and therefore, the trial court found that the suit is within limitation and on the point of non-joinder of necessary parties, the learned trial court opined that merely because non-joinder of necessary parties suit cannot be dismissed under Order 7 Rule 11 because the parties can be impleaded at any stage.

8. Even after notice given to the respondents, none appeared on their behalf. Further an SPC was issued still no one appeared on

behalf of the respondents.

9. The learned counsel for the applicants placed reliance on judgment of Hon'ble Apex Court in the case of **Fatehji and Company and another vs. L.M. Nagpal and others; (2015) 8 SCC 390** in which it was held that under Article 54 of Limitation Act, suit for specific performance of agreement to sell immovable property, period prescribed is 3 years and further, he placed reliance on judgment of Hon'able Apex Court in case of **Kenchegowda (since deceased) by LRs vs. Siddegowda @ Motegowda; (1994) 4 SCC 294** in which it was held that suit for partition is not maintainable without impleading all the co-sharers.

10. The plaintiffs sought following reliefs in the plaint :-

“A. That, the suit property described is the ancestral property of the plaintiffs and it be Declared that the plaintiffs are entitled to their rights in the suit property by partition. (emphasis applied).

B. It be Declared that the registered sale deed bearing No.1A/602 dated 05.04.2008 executed by deceased Narayan in favour of the defendant no.1 is not binding on the plaintiffs.

C. Permanent Injunction to the effect that on the basis of the registered sale deed and mutation in the revenue records, the suit property be not alienated.

D. Cost of the suit be awarded to the plaintiffs from the defendants.”

11. The first ground taken by the applicants is that the suit is barred by limitation. On this point, the counsel for the applicants submits that on this matter provisions of Article 59 of Limitation Act 1963 would apply. Article 59 of 1963 provides as under :-

Description of suit	Period of limitation	Time from which period begins to run
To cancel or set aside an instrument or decree or for the rescission of a contract	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.

12. From the reading of Article 59, it is apparent that it is for setting aside an instrument or decree or it is for the rescission of a contract. However, in the present case, the case is filed for setting aside the alienation admittedly done by father of the plaintiffs and this case is governed by Section 109 of Limitation Act 1963. Though, on this aspect, the learned trial court referred Article 126 which is old Act of 1908. The corresponding article of new Act of 1963 is 109. The Article 109 of Limitation Act provides as under :-

Description of suit	Period of limitation	Time from which period begins to run
By a Hindu governed by <i>Mitakshara</i> law to set aside his father's alienation of ancestral property.	Twelve years	When the alienee takes possession of the property.

13. In the new Article 109, the time from which period of

limitation is date of alienation and the total period prescribed is 12 years. The time commencement of period of limitation does not take upon transfer of possession, and therefore, as suit is filed within 12 years of date of alienation by late Narayansingh, this suit on the basis of averments made in the plaint appears filed within limitation. So far as the non-joinder of necessary parties are concerned, the learned lower court rightly observed that only on the ground of non-joinder of necessary parties, suit cannot be dismissed under Order 7 Rule 11 of CPC. The plaintiffs are at liberty to implead the necessary parties if they so desire. Even after an opportunity is granted to the applicants for impleading necessary parties in the suit and parties are not impleaded then only the suit can be dismissed for non-joinder of necessary parties.

**14.** Accordingly, at this stage, I find no merit in this civil revision and the civil revision is accordingly dismissed.

**( ALOK VERMA )  
JUDGE**