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In the Court of the Sub Judge-II, Benipur

Present:- Pranav Kumar Bharti

Title Suit No.-33 of 2018, Registration No.-17/18

Bibi Nurun Nishan vs. Md. Ilahi Bux & Other

ORDER

22-11-2021

Case is called out and record is produced before me. A Wakalatan hazari is filed on behalf of the plaintiff and defendant is also present. On perusal of the case record, it appears that today this record is fixed for order on petition dated-16.11.2021 & 08.08.2019 filed on behalf of the Defendant No.-1 and its copy has been supplied to the learned counsel of the plaintiff. In this petition, it has been submitted that petition dated-08.08.2019 U/O-VII, Rule-11 of the C.P.C. has been disposed of as not pressed. Petitioner couldn't press earlier due to Covid-19. So prayed to permit the petitioner to press the petition dated-08.08.2019 and hear the same on merit for the just decision of this case. In petition dated-08.08.2019, U/O-VII, Rule-11 and u/s-151 of the C.P.C. was filed on behalf of the Defendant No.-1. It has been submitted that from perusal of the plaint it will appear that plaintiff has challenged the Kewal dated-26.12.1986 and from perusal of the para-40 of the plaint, there is house and the same is on rent. This suit is for rent, damage and for recovery of possession with permanent injunction. Further submission of the petitioner is that plaintiff is the vendor of the Kewala 26.12.1986 and as such suit is time barred and the plaintiff has not properly valued, not paid proper court fee. It has further been submitted that plaintiff has himself sold land from valued Rs.4,48,000/Kattha with respect to suit land through three sale deed on 20.02.2018, 21.02.2018 & 21.02.2018 and as per the valuation stated by the plaintiff is wrong, imaginary. The plaintiff has under valued the suit property and she didn't pay the proper court fee. Further submission of the petitioner is that plaintiff has got no cause of action at all. Therefore, he prayed that your honour graciously be pleased to reject the plaint.

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A rejoinder petition is filed on behalf of the plaintiff on 27.11.2019 in which it has been submitted that petition dated-08.08.2019 as framed and filed is not maintainable. Besides the other ornamental defence of no cause of action, to file such petition, barred by the principles of estoppel, waiver, acquiescence and law of limitation, it has been submitted that petition dated-08.08.2019 does not come under the purview of Order-VII, Rule-11 of the C.P.C. Further submission of the plaintiff is that petitioner is not a party to the alleged sale deed dated-26.12.1988 as the same is forged and fabricated and not executed by plaintiff. It has been further submitted that cause of action arose to the plaintiff on 18.12.2017 when plaintiff came to know the existence of registered sale deed dated-26.12.1988 and thus suit is instituted within time from from knowledge. Further submission of the plaintiff is that the valuation given by the plaintiff in para-33 is sufficient and court fee paid by the plaintiff is sufficient. Further submission of the plaintiff is that the petition dated-08.08.2019 is premature and has no merit and the same is fit to be rejected in the interest of justice.

Heard both the learned counsels and perused the case record. On hearing and perusal of the case record, it appears that this suit has been brought by the plaintiff against 8(eight) defendants on 17.05.2018. It further appears that after admission of the suit, summons were issued against the defendants. It further appears that Defendant No.-6 to 8 appeared in the suit and filed the W.S. on 17.06.2019. Defendant No.-1 & 2 appeared in the suit on 24.06.2019 and W.S. filed on behalf of the Defendant No.-1 on 05.08.2019. It further appears that Defendant No.-3 died before admission and his name was expunged vide order dated-09.08.2018 and Defendant No.-2 didn't file the W.S. It further appears that issues were settled on 11.12.2019 and 14.01.2020 this instant suit has been pending for evidence. On perusal of the case record, it also appears that Defendant No.-1 filed a petition

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continued..... U/O-VII,Rule-11 and u/s-151 of the C.P.C, but despite several directions, nobody appeared on behalf of the Defendant No.-1 and ultimately the same was rejected as not pressed on 22.10.2021 and while this record was fixed for evidence another petition to press the petition dated-08.08.2019 is filed on 16.11.2021.

During the course of argument,learned counsel of the plaintiff placed his reliance on the order/judgment passed by *the Hon'ble Bombay High Court in Gaurav s/o-Balmukund & Others vs. Tukaram Pandurang Dhagekar and Hon'ble High Court of Judicature at Patna in Mannu Das vs. Kisto Das*. Whereas learned counsel of the plaintiff placed his reliance on the order/judgment passed by *the Hon'ble High Court of Judicature at Patna in Most. Kunti Kuer & Others vs. Ajay Kumar Dwivedi @ Udaie Duve & Others*(Misc. Appeal No.-408 of 2014), *Hriday Narayan Kumar & Others vs. Smt. Jaya Singh & Others*(Civil Misc. Jurisdiction No.-621 of 2016),*Chandrama Singh @ Nathuni Singh vs. Registrar Civil Court*(C.W.J.C. No.-18694 of 2010), *Smt. Manorm Sinha & Others vs. Krishna Sao* (C.R. No.-2218 of 2005),*Shailendra Jha vs. State of Bihar* (C.W.J.C.-6067 of 2006),*Shiekh Mukhtar vs. Ehsanullah* (CWJC No.-3669 of 2013), *Pravin Singh vs. Madan Mohan Singh* (C.R. No.-122 of 2014) and order/ judgment passed by *the Hon'ble M.P. High Court in C.R. No.-34 of 2021 and by the Hon'ble Supreme Court passed in Annasaheb Bapusaheb Patil vs. Balwant Bapusaheb Patil and P.V. Guru Raj Reddy vs. P. Narendra Reddy*(Civil Appeal No.-5254 of 2006)

Valuation of suit- On perusal of the petition dated-08.08.2019, it transpires that petitioner/defendant wants to get the plaint rejected on two grounds. One,the suit is time barred and second,the suit is not properly valued,rather arbitrarily valued which covered U/O-VII,Rule-11(b) & (d) of the C.P.C. As per the Order-VII,Rule-11(b) of the C.P.C. plaint is liable to be rejected where the relief claimed is under valued,and the plaintiff,on being required by the Court to correct the valuation within a time to be fixed by the Court fails to do so.

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In this case, no such order has been made by the Court regarding valuation of the suit. So provision of Order-VII, Rule-11(b) of the C.P.C. does not apply in this suit. In support of his contention order of the ***Hon'ble High Court of Judicature at Patna passed in Mannu Das vs. Kisto Das*** is cited by the Defendant No.-1, but the same is not applicable to the fact and circumstance of this case.

Barred by any other law- Second plea of the Defendant No.-1 is that this suit is comes under the purview of Order-VII, Rule-11(d) of the C.P.C. and the plaint is fit to be rejected. Clause-(d) of Order-VII, Rule-11 is as follows- "Where the suit appears from statement in the plaint to be barred by any law." Submission of the learned counsel of the petitioner is that plaintiff is the vendor of the Kewala No.-26.12.1986 and as such suit is time barred and it comes under the purview of Article-58 of the Limitation Act.

Whereas learned counsel of the plaintiff submitted that limitation is a mixed question of law and fact and it should be decided at the later stage of the suit, not U/O-VII, Rule-11(d) of the C.P.C.

Hon'ble Apex Court in Balsaria Construction Pvt. Ltd. vs. Hanuman Seva Trust & Others observed that question of limitation is a mixed question of law and fact, unless and until it is apparent from ex-facie on reading of the plaint that the suit is barred by limitation, the petition or plaint cannot be rejected U/O-VII, Rule-11(d) of the C.P.C. Suit couldn't be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking evidence.

It is well settled that at the stage of exercise of power under Order-VII, Rule-11, the stand/plea of the defendants in the W.S. or in the application for rejection of plaint is immaterial. ***Hon'ble Apex Court in P.V. Guru Raj Reddy vs. P. Neeradha Reddy*** expounded that "rejection of plaint U/O-VII, Rule-11(d) of the C.P.C. is a drastic power conferred in the Court to terminate a civil action at the threshold.

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continued..... *The condition precedent to the exercise of power under Order-VII, Rule-11, therefore, are stringent and have been consistently held to be by the Court. It is averment in the plaint that has to be read as a whole to find out whether it disclose a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order-VII, Rule-11, the stand of the defendants in the W.S. or in the application for rejection of plaint is wholly immaterial. It is only if the averment in the plaint ex-facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law, the plaint can be rejected. In all other situation, the claim will have to be adjudicated in the course of trial."*

In the present case after reading the plaint as whole, it appears that plaintiff has brought this instant suit for declaration of sale deed dated-26.12.1988 forged, fabricated and not binding upon the plaintiff. According to the Article-56 & 58 of the Limitation Act, period of limitation begins to run when the issue or registration becomes known to the plaintiff or when the right to sue first accrues. As per the averment made in para-29 of the plaint, plaintiff came to know about forged and fabricated sale deed dated-26.12.1988 on 12.12.2017 and she filed this suit on 17.05.2018. So far as reliance of the defendant on the order/judgment of the Hon'ble Bombay High Court in Gaurav, s/o-Balmukund vs. Tukaram Panduran Dhagekar is concerned, it is not applicable to the fact and circumstance of this case.

Therefore, in the light of discussion as made above, the Court is not inclined with the contention of the learned counsel of the Defendant No.-1. The Court is of opinion that question of limitation is a mixed question of fact and law and it should be decided during the course of trial. Hence, petition dated-08.08.2019 filed on behalf of the Defendant No. -1 U/O-VII, Rule-11 of the C.P.C. is devoid of merit and the same is disposed of as rejected.

Fixing on for plaintiff evidence.

Dictated

Sub Judge-II

22.11.2021