

01.05.2023

ORDER

Vide this order, the Court shall dispose off the application of defendant No.1 and 2 under Order VII Rule 11 r/w Sec. 151 CPC for dismissal of the suit being time barred.

Following arguments were submitted on behalf of defendant no.1 & 2 :

- a) Plaintiff has filed the present suit seeking cancellation of title documents and partition of suit property and the prayers made in the nature to the suits are relating to the declarations. As per law of limitation, the schedule prescribes the period of three years from the date of knowledge, from which the person/party is entitled to seek the cancellation of any document.
- b) In the plaint, plaintiff admitted that the documents in question were duly executed and registered in the office of Sub-Registrar, Seelampur on 25.08.2004. Plaintiff further admitted by stating that all defendants reiterated their assurance that after purpose as proposed be cancelled by defendant no.1 & 2. So, plaintiff was having full knowledge about the execution of the documents since 25.08.2004.
- c) The registered documents are public documents and any person inspect or get certified copy of the same on payment of fees. Therefore, the plea of plaintiff that he was completely unaware about nature of documents in question is not believable.
- d) As per Section 3 of the Limitation Act, 1963 provides that the suit instituted or appeal preferred or application made after the prescribed

period shall be dismissed even though the point of limitation has not been set-up as a defence.

e) The limitation period for filing of the present suit started from 26.08.2004 and subsisted till 25.08.2007. Only within this period plaintiff was required to file the suit. However, plaintiff never served any notice or filed any application before the concerned Sub-Registrar taking objection or even filed any suit before any court of law for the cancellation of the documents in question.

f) Plaintiff has tried to take technical pleas of limitation by mentioning the tampered and hampered transcript and the same is unsustainable as per the judgment of Hon'ble apex court which held that "Technical Plea of limitation" is not permissible.

g) There cannot be any exclusion of time after the lapse of prescribed limitation. As such the suit of plaintiff is liable to be dismissed being barred by law of limitation.

Following arguments were submitted on behalf of plaintiff :

a) The present application is gross misuse of process of law and has been filed with the malafide intention to harass plaintiff.

b) The knowledge about the share of plaintiff having been transferred deceitfully by defendant no.1 and 2 in collusion with defendant no.3 came to plaintiff in the month of July 2020 and hence, limitation period to file the present suit would begin from the month of July, 2020 as per Article 58 and 59 of Part-III in first division of the Limitation Act, 1963.

c) On 25.08.2004, plaintiff had only knowledge that some loan documents were being executed in Sub-Registrar Office, Seelampur. The contents of document were not read over to him and these facts have been clearly explained in the plaint. The exact knowledge of the documents and its nature was made known to plaintiff only when he got documents dated 25.08.2004 physically in hand from one Mohd. Shahid, who had given loan of Rs.5 Lacs to defendant no.1.

d) It is settled law that under Order VII Rule 11 CPC, only the contents of the plaint and annexed documents can be looked into.

e) Only the title holder of the documents can get the certified copy of the documents by paying the prescribed fees therefore defendant no.1 is entitled to get the certified copy of the documents and not plaintiff.

f) The present case does not fall in the preview of Part-III of computation of period of limitation which prescribes the exclusion of time in certain other cases.

g) The suit may not be dismissed straightaway as the question of limitation is a mixed question of facts and the law as held by the Apex Court in numerous judgments.

h) There is no merit in the application and the same is liable to be dismissed with exemplary cost.

Findings of the Court :

Let us first discuss relevant legal provision and settled legal proposition in respect of rejection of plaint under Order VII Rule 11 CPC. The plaint can be rejected on the following grounds: -

- (a) where the plaint does not disclose cause of action;

- (b) where relief claimed is undervalued;
- (c) where plaint is insufficiently stamped;
- (d) where suit is barred by law;
- (e) where plaint is not in duplicate;
- (f) where there is non-compliance with statutory provisions;
- (g) other grounds.

While considering the application under Order VII Rule 11 CPC, the Court is required to take into consideration the plaint and documents accompanying the plaint and not the defence of the defendant or the documents relied upon by defendant (*ref. Steel Authority of Indina Ltd. vs. Rameshwar Dass Bishan Dayal, 60 (1995) DLT 271, 275, 276 ; D. Ramachandran vs. R.V. Janki Raman 1999 (3) SCC 267*). Where the Court is in doubt or the Court is not sure and certain that the suit is barred by some law, the Court would not reject the plaint under Order VII Rule 11(d) CPC [*ref.: Kasturi vs. Baskaran 2004 AIHC 1504 (1506) (BOM)*]. A plaint cannot be rejected on the ground of limitation specially when it is a mix question of facts and law at the threshold [*ref. AIR 1995 (AP) 43, 46; AIR 2003 NOC 375 (Kant) ; 2004 AIHC 48, 47 (AP)*].

Let us now examine whether the aforesaid application deserves to be allowed in the light of relevant legal provisions and settled legal proposition.

Plaintiff has filed the present suit for cancellation of title documents and partition of the suit property.

On perusal of the aforesaid application, it is transpired that defendant no.1 and 2 have sought dismissal of the suit and not rejection of the plaint under Order VII Rule 11 r/w Sec. 151 CPC & r/w Section 3 & 5 of Limitation Act. It is well settled that under Order VII Rule 11 CPC, only plaint can be rejected and the suit cannot be dismissed.

The contentions of defendant no.1 and 2 regarding the suit of plaintiff being barred by limitation also deserve to be rejected as this Court is of the opinion as per settled legal proposition that the issue of limitation is mixed question of facts and law and in the present suit also, this issue needs to be decided only after the parties lead respective evidence.

In view of the above discussion, the aforesaid application is dismissed being devoid of any merit.

The application is disposed off accordingly.

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