

**Order below Ex: 11 – Application moved by
defendants for Rejection of Plaint
(Order 7, Rule 11)**

1. Heard the Ld. Advocates for both the parties. Read this application, reply (Exh. 12), pleadings and other papers on record.

2. The present application has been moved by the defendants under Or. 7 R. 11 of C.P.C. contending that the plaint does not disclose any cause of action; the relief claimed is undervalued; the plaint is returned upon paper insufficiently stamped; the suit appears from the statement in the plaint to be barred by any law. The plaintiff has filed reply and objection vide Ex:.12.

3. Both the parties have presented their arguments at length. Before deciding the point in issue, it would be helpful to sight provisions of Or. 7 R. 11 of C.P.C.

Order 7 R. 11 Rejection of plaint :-

The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, 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;
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of rule 9

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied

that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

4. Thus the point in issue is whether the plaint deserves to be rejected as provided under Or. 7 R. 11(a), 11(b), 11(c), 11(d) and 11(e).

4.1 The defendants have argued that the plaintiff, aged 89 years has come forward declaring herself as the only child of deceased Somabhai Laxmanbhai and has claimed her right, title and interest over the suit property. But in fact, the deceased Somabhai Laxmanbhai has died issue less, 92 years prior to the filing of present suit. The plaintiff is not a legal heir of deceased Somabhai Laxmanbhai and hence has no cause to file the present suit and hence the plaint deserves to be rejected.

4.2 It is further argued by the defendants that the plaintiff has filed present suit making averments that the suit property Sr. No. 1026 of Vajepar is undivided ancestral joint property and the plaintiff has claimed her 1/2 share in it. But the plaintiff has filed the present suit after a span of 70 years. Hence the suit of the plaintiff is barred by limitation and hence plaint deserves to be rejected.

4.3 It is argued by the defendants that the plaintiff in her plaint has, as one of the relief, sought prayer for declaring the revenue entries pertaining to the suit property to be void. The plaintiff has never ever challenged the revenue entries till date and has first time sought this relief before this Court. The plaintiff cannot challenge the revenue entries before this Court. The relief of the plaintiff is barred by S. 11 of Revenue Jurisdiction Act. Moreover the plaintiff has not joined the Revenue authority as party to the suit and hence the suit of the plaintiff is bad for non joinder of necessary party. The defendants have further argued that the revenue entries pertaining to suit property came to be entered in 1958. Considering the provisions of S. 3 of

Transfer of Properties Act and S. 59 of Limitation Act, the revenue entries could be challenged within three years of date of knowledge of such entries. But visibly the plaintiff has challenged such entries after a span of 70 years and hence the suit of the plaintiff is barred by limitation.

4.4 The defendants have lastly argued that, as per the mandatory provisions of Order VII Rule 1 (i) the plaintiff ought to describe a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far as the case admits. But the plaintiff has failed to do so and thus the plaint deserves to be rejected.

4.5 To the contrary, the plaintiff has submitted that the present application of the defendants is sheer misuse of process of law. The defendants have, in their written statement, admitted the fact that the suit property is ancestral undivided property of Jerambhai Vastabhai, but have denied the fact that the plaintiff is legal heir of Deceased Somabhai Laxman bhai. That whether the plaintiff is legal heir of deceased Somabhai Laxmanbhai or not is a matter of evidence and can be decided only after leading evidence. It is further argued that the rights of any party cannot be decided merely on basis of revenue records. There is no limitation fixed for filing a suit of partition. It is settled law that Possession of one co sharer is possession of all the co sharers, it cannot be adverse to them unless there is a denial of their right to their knowledge by the person in possession and exclusion and ouster following thereon for the statutory period. There can be no question of oster, if there is participation in the profits to any degree. When no period of limitation is fixed for filing Suit for partition by one co sharer against other in respect of a joint holding, the question of other co sharers acquiring title to such holding by adverse possession for over 12 years can never arise. Revenue entries cannot be basis of title and no issue of ownership can be decided on basis of such revenue entries. Just because the name of plaintiff has not been mutated, the plaintiff cannot be said to have no right, title and interest in the suit property. Cause of action for the purpose of Art. 58 of Limitation

Act accrues only when the right asserted in the suit is infringed or there is at least a clear and unequivocal threat to infringe that right. Therefore, the mere existence of an adverse entry in the revenue record cannot give rise to cause of action. The plaintiff has filed the present suit for partition and delivery of possession. The defendants have not taken any plea regarding adverse possession. Article 58 of Limitation act prescribes limitation of 3 years from the date when the right to sue first accrues to obtain a declaration. Under article 65 the period of limitation prescribed for filing a suit for possession of immovable property or any interest therein based on title is 12 years from the date of possession of the defendants becomes adverse to the plaintiff. Only if the defendants possession become adverse to the interest of the real owner and defendants possession becomes adverse to the real owner and the real owner fails to file the suit for possession within 12 years, as prescribed under Art. 65 of the limitation Act, from the point of time the possession by the defendants become adverse to the plaintiff, the real owner loses his title over the property. The plaintiff has further argued that the issue of limitation is mixed question of fact and law and thus it cannot be decided without leading evidence. Hence the present application deserves to be rejected.

4.6 In an application for rejection of the plaint under Order 7 Rule 11, the law has been rather well settled for quite some time in a long catena of cases that the plaint should be taken as it is and the application should be considered on the basis of the averments in the plaint itself and no external aid is available to the court for the purpose. It has also been the well-settled principle of law that the court should be rather hesitant to exercise the jurisdiction under Order 7 Rule 11 unless the factual score warrants such exercise and the matter in issue falls within the four corners of the requirement of the statute. The court has not to see whether the claim made by the petitioner is likely to succeed: it has merely to satisfy itself that the allegations made in the plaint, if accepted as true, would entitle the plaintiff to the relief he claims. If accepting

those allegations as true no case is made out for granting relief no cause of action would be shown and the petition must be rejected. But in ascertaining whether the plaintiff shows a cause of action the court does not enter upon a trial of the issues affecting the merits of the claim made by the plaintiff. It cannot take into consideration the defences which the defendant may raise upon the merits; nor is the court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact. If the allegations in the plaint, prima facie, show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact, or whether the plaintiff will succeed in the claims made by him..

4.7 Cause of action and applicability of law are two distinct different and independent things and one cannot be confused with the other. The expression 'cause of action' has not been defined in the Code. It is however settled law that every suit presupposes the existence of a cause of action. If there is no cause of action, the plaint has to be rejected. Simply, cause of action means a right to sue. It consists of material facts which are imperative for the plaintiff to allege and prove to succeed in the suit. A cause of action means every facts, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is well settled that in all cases of preliminary objection, the test is to see whether any of the reliefs prayed for could be granted to the plaintiff if the averments made in the plaint are proved to be true. For the purpose of considering a preliminary objection, the averments in the plaint should be assumed to be true and the court has to find out whether those averments disclose a cause of action or a triable issue as such. The court cannot probe into the facts on the basis of the controversy raised in the counter.

4.8 Hence considering the averments of the plaint to be true, without going to the merits of the case, the plaintiff seems to show a proper cause of action. Whether the plaintiff is only legal heir of deceased Somabhai Laxmanbhai or not is matter of fact and can be only proved by leading evidence. The plaintiff has filed present suit for partition, possession, deceleration and injunction. The plaintiff in his plaint has described the suit property to be a joint, undivided property. It is well settled principle that a co-owner has an interest in the whole property and also in every parcel of it and Possession of the joint property by one co-owner is in the eye of law, possession of all even if all but one are actually out of possession. Hence the plaintiff can be said to have cause of action of his rights as a co-owner are infringed. The defendants are alleged to have infringing the rights of the plaintiff which is a proper cause of action to seek relief against the defendants. Hence I am not inclined to hold that the plaintiff has no cause of action to file the present suit.

4.9 As far as the question of limitation for suit of partition is concerned, the legislature has not set a specific period of limitation for filing a suit for partition. This is because partition is considered an incident attached to the property, and there is always a running cause of action for a co-sharer to seek partition when they decide not to keep their share joint with others. Therefore, the period of limitation is dependent on the will of the co-sharer. The cause of action for a partition suit arises whenever a co-sharer decides to seek partition. This means that as long as a co-sharer has not relinquished their right to seek partition, they can file a suit at any time. Considering Article 65, Suit for possession of immovable property or any interest therein based on title is to be brought within 12 years from the time when the possession of the defendant becomes adverse to the plaintiff. The plaintiff in her plaint has clearly averred that she was been given share in the profits of the disputed property and there is no prior partition too. No third party interest has been created and thus she had no reason to doubt the defendants and thus had no occasion to check

the revenue records. But one month prior to filing of the present suit the intentions of the defendants has come to the knowledge of the plaintiff. The plaintiff for the first time has been informed that the defendants do not intend to give any share to her in the suit property. Thus there is no question of adverse possession or ouster.

4.10 In case of Govindammal vs R.Perumal Chettiar & Ors¹ it has been observed by Hon'ble Supreme Court of India that,

In the case of Vidya Devi alias Vidya vati (dead) by LRs v. Prem Prakash & Ors. reported in (1995) 4 SCC 496 the question was whether the plea of acquisition of title by adverse possession was available to the co-bhumidhar or not. In that context, their Lordships held that when no period of limitation is fixed for filing a suit for partition by a co-bhumidhar against his other co-bhumidhars in respect of a joint holding, the question of the other co-bhumidhar acquiring his title to such holding by adverse possession for over 12 years can never arise. It was further observed that if that be so, such plea of perfection of title by adverse possession of a holding by a co-bhumidhar against his other co-bhumidhar as defence in the latter's suit for partition can be of no legal consequence.

In the case of Mohammad Baqar & Ors. V. Naim-un-Nisa Bibi & Ors. reported in AIR 1956 SC 548 it was observed that under the law possession of one co-sharer is possession of all co-sharers, it cannot be adverse to them, unless there is a denial of their right to their knowledge by the person in possession and exclusion and ouster following thereon for the statutory period. There can be no question of ouster, if there is participation in the profits to any degree.

1. LAWS(SC) 2006 10 4

4.11 In Case of M/S. Zee Telefilms Ltd. (Now Known As Zee Entertainment Enterprises Ltd.) vs Suresh Productions And Ors.² it has been observed by Hon'ble Supreme Court that

15. A similar view was reiterated in [C. Mohammad Yunus v. Syed Unnissa](#), AIR 1961 SC 808, in which this Court observed: (AIR p. 810, para 7)

"7. ... The period of six years prescribed by [Article 120](#) has to be computed from the date when the right to sue accrues and there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right." In C. Mohammad Yunus, this Court held that the cause of action for the purposes of [Article 58](#) of the Act accrues only when the right asserted in the suit is infringed or there is at least a clear and unequivocal threat to infringe that right. Therefore, the mere existence of an adverse entry in the revenue records cannot give rise to cause of action."

4.12 Thus considering the averments of the plaintiff to be true, the cause of action is said to be accrued one month prior to the filing of suit and hence the suit of the plaintiff cannot be said to be barred by limitation.

4.13 In case of Salim D. Agboatwala vs Shamalji Oddhavji Thakkar³ Hon'ble Supreme Court has observed that

4.14 10. Insofar as the rejection of plaint on the ground of limitation is concerned, it is needless to emphasize that limitation is a mixed question of fact and law. It is the case of the appellants/plaintiffs that only after making inspection of the records in connection with the suit land available in the office of defendant No.3 (Court Receiver) that they came across the correspondence and documents relating to the

2. LAWS(SC) 2020 2 81

3. 2021(17) SCC 100

transactions and that the proceedings before the ALT were collusive, fraudulent and null and void. The appellants/plaintiffs have even questioned the authority of the Court Receiver to represent them in the tenancy proceedings.

11. The above averments may or may not be true. But if the plaintiffs succeed in establishing the above averments, the issue of limitation cannot be put against the plaintiffs. Generally a party, who never had any notice of a particular proceeding before a quasijudicial authority, is entitled to approach the Court upon gaining knowledge of the proceedings. Limitation cannot be put against such a party.

12. We are not dealing here with a case where notices were ordered to be issued, but were not or could not, be served on necessary and proper parties. We are dealing with a case where the plaintiffs assert in no uncertain terms that notices were never ordered to them nor served on them. Therefore, the answer to the issue regarding limitation, will depend upon the evidence with regard to the issuance and service of notice and the knowledge of the plaintiffs. Hence, the Trial Court as well as the High Court were not right in rejecting the plaint on the ground of limitation, especially in the facts and circumstances of this case.

13. As observed by this Court in [P.V. Guru Raj Reddy vs. P. Neeradha Reddy And Others¹](#), the rejection of plaint under Order VII Rule 11 is a drastic power conferred on the Court to terminate a civil action at the threshold. Therefore, the conditions precedent to the exercise of the power are stringent and it is especially so when rejection of plaint is sought on the ground of limitation. When a plaintiff claims that he gained knowledge of the essential facts giving rise to the cause of action only at a particular point of time, the same has to be accepted at the stage of

considering the application under Order VII Rule 11.

14. Again as pointed out by a three member bench of this Court in [Chhotanben vs. Kiritbhai Jalkrushnabhai Thakkar2](#), the plea regarding the date on which the plaintiffs gained knowledge of the essential facts, is crucial for deciding the question whether the suit is barred by limitation or not. It becomes a triable issue and hence the suit cannot be thrown out at the threshold.

5. Considering the submission of parties, ratio laid down in the above mentioned judgments, it appears that the contention raised by the defendants are not tenable. Under the circumstances, I pass the following order :

: O R D E R :

This application stands rejected.

No order as to costs.

Morbi
Dt:27/11/2024

(Durgesh Kanaiyalal Chandnani)
3rd Addl. Cr. Civil Judge
MORBI
GJ01081