

ORDER PASSED BELOW EXH.23
IN R.C.S.NO.375/2013

The defendants have filed this application under O.VII, R.11 (a) and (d) for rejection of the plaint.

Brief facts of the application are as under:-

2. The plaintiffs have filed this suit for the declaration about the Will Deed dated 28/09/1977. The plaintiffs have put their thumb impressions as a witness on the said Will Deed. The plaintiffs are having the knowledge about the Will Deed since 28/09/1977. In such circumstances, the suit for declaration about the Will Deed is not within the limitation. Hence, the plaint is liable to be rejected vide the provisions of O.VII, R.11(d) of the Civil Procedure Code.

3. It is further contended that, in the year 1977, the plaintiffs were not having any right in the properties of their father namely Gahinaji Kondaji Chambhar. Therefore, the plaintiffs are not having any right to file the suit. Hence, the plaint is also liable to be rejected vide the provisions of O.VII, R.11(a) of the Civil Procedure Code. Hence, this application.

4. The plaintiffs filed their say at Exh.24 and opposed the application on the ground that the plaintiff Thakubai Pilgar is educated and she used to sign on the documents. But, the alleged Will Deed bears the thumb impression. Therefore, at this stage, it is not proved that there are thumb impressions of the plaintiffs on the Will Deed.

5. It is further contended that the defendants mischievously got executed the Will Deed from plaintiff's father. Said issue is required to be proved by the thorough evidence of the parties. So also, the issue of limitation is mixed question of facts and law. Therefore, at this stage, it cannot be presumed that the plaintiff's suit is not within the limitation. Hence, prayed to reject the application.

6. Heard Ld.Adv.Shri.P.R.Jagdhane for the defendants and Ld.Adv.Shri.N.Y.Shirsath for the plaintiffs.

7. As earlier mentioned, the defendants are seeking the rejection of the plaint vide the provisions of O.VII, R.11(a) and (d) of the Civil Procedure Code. For the ready reference, it is necessary to quote the provision which reads as under:-

11. Rejection of Plaint : The plaint shall be rejected in the following cases:

(a) where it does not disclose a cause of action;

(b) ---

(c) ---

(d) where the suit appears from the statement in the plaint to be barred by any law.

8. In the present suit, the plaintiffs have mentioned the specific cause of action by stating that they came to know about the Will Deed and the mutation entries in the month of February-2013. Therefore, it cannot be said that the plaint does not disclose the cause of action. Whether the cause of action shown by the plaintiff is correct or not can be decided during the trial and on the basis of the evidence of the parties. Therefore, there is no ground to reject the plaint as per the provisions of O.VII, R.11(a) of the Civil Procedure Code.

9. It is the say of the defendants that the plaintiffs have put their thumb impressions on the alleged Will Deed dated 28/09/1977. Therefore, the plaintiffs are having the knowledge of the Will Deed since 28/09/1977. The plaintiffs have filed this suit in the year 2013 seeking the relief about the Will Deed. Therefore, from the record it can be seen that the suit is not within the limitation.

10. On the other hand, the plaintiffs denied their thumb impressions on the Will Deed. While deciding the application under O.VII, R.11 of the Civil Procedure Code, the only plaint can be taken into consideration and not the written statement of the defendant.

11. However, on perusal of the pleadings of the parties, it appears that, there is dispute about the execution of the Will Deed by deceased Gahinaji Kondaji Chambhar (Rajbhog). The issue of the genuineness of the Will Deed can be decided only on the basis of the evidence of the parties.

12. Ld.Adv.Mr.P.R.Jagdhane for the defendants relied on the following judgments to support his contention that the plaint is liable to be rejected on the ground of non-disclosure of cause of action and barred by the law of limitation. The citations are as follows :-

- (1) ***Hon'ble Supreme Court in case of Samarsing Vs.Kedarnath, reported in AIR 1987 S.C., Page No.1926.***
- (2) ***Hon'ble Supreme Court in case of State of Orissa Vs. Klockner and Company, reported in AIR 1996 S.C., Page No.2140.***
- (3) ***Hon'ble Supreme Court in case of T.Arivandandam Vs. T.V.Satyapal, AIR 1977 S.C., Page No.2421.***
- (4) ***Hon'ble Supreme Court in case of Premlala Vs. Chandiprasad, reported in AIR 2007, S.C., Page No. 1247.***
- (5) ***Hon'ble Kerala High Court in case of M/s. United India Insurance Vs. Andrew Vivera, reported in AIR 1990, Kerala, Page No.139.***
- (6) ***Hon'ble Orissa High Court, in case of Padma Bewa Vs. Krupa Sindhu, reported in AIR 1986, Orissa, Page No.97 and Sivananda Roy Vs. Janki Ballav, reported in AIR 1985, Orissa, Page No.197 and Harekrushna Sahu Vs.***

Bhagirathi Sahu, reported in AIR 1975, Orissa, Page No.97.

13. On the other hand, Ld.Adv.Mr.N.Y.Shirsath submitted that the plaint can be rejected only if from the statement in plaint it appears that the suit is barred by law and not otherwise. In support of his argument, he relied on the following judgments.

(1) Hon'ble Supreme Court in case of Premlala Vs. Chandiprasad, reported in AIR 2007, S.C., Page No.1247.

(2) Hon'ble Sikkim High Court in case of Durga Bahadur Rai Vs. Golman Rai, reported in AIR 2010, Sikkim, Page No.12.

14. Perused the judgments cited by the parties. On perusal of the judgment of Kerala High Court, in case of M/s.United India Insurance (supra) and the judgment of Hon'ble Orissa High Court in case of Padma Bewa (supra) and Harekrushna Sahu (supra), it appears that the Hon'ble High Court discussed the provisions of O.VI, R.4 in those judgments. In the present case, the issue of O.VII, R.11(a) and (d) is involved. Therefore, it is respectfully submitted that the ratio laid down in the above said judgments is not at all applicable to the facts of this suit.

15. Hon'ble Orissa High Court in case of Shivnanda Roy (supra) specifically held in Para-8 of the judgment that -

Another principle should also be kept in mind that for rejection of a plaint under O.VII, R.11 of the C.P.C., the court should examine the plaint and no other material for finding out if the plaint discloses a cause of action.

16. In the present case, the plaint specifically discloses the cause of action. Furthermore, it can be gathered from the entire reading

of the plaint that the plaintiffs have specifically mentioned the cause of action in the plaint. Therefore, the judgment of the Hon'ble Orissa High Court in case of Shivnanda Roy (supra) is also not helpful to the defendants.

17. The ratio of the judgment of the Hon'ble Supreme Court in case of Samarsing (supra) is that O.VII, R.11 of the Civil Procedure Code does not place any restriction or limitation on the exercise of courts power it does not either expressly or by necessary implication provide that power under O.VII, R.11 of Civil Procedure Code should be exercised at a particular stage only.

18. In the case in hand, it is not in issue that whether the plaint can be rejected after filing the written statement or not only question involved is that whether the plaint can be rejected as it is barred by law of limitation or not. Therefore, the facts discussed in the judgment are totally different from the facts of this suit. Hence, it is respectfully submitted that the above said judgment is not helpful to the defendants.

19. The ratio of the judgment of the Hon'ble Supreme Court in case of State of Orissa (supra) is about the arbitration agreement. Therefore, the facts discussed in the abovesaid judgment is different from the facts of this case. Hence, it is respectfully submitted that the abovesaid judgment is not helpful to the defendants.

20. The ratio of the judgment of the Hon'ble Supreme Court in case of T.Arivandandam (supra) is that while reading of the plaint if it is manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, the judge should exercise his power under O.VII, R.11 of Civil Procedure Code taking care to see that the ground mentioned therein is fulfilled.

21. In the case in hand, the plaintiffs are claiming their rights as the daughters of deceased Gahinaji who has allegedly executed the Will Deed in favour of defendant No.1. Therefore, at this stage, it cannot be said that the plaintiffs have filed meritless and vexatious suit against the defendants.

22. The ratio of the Hon'ble Supreme Court judgment in Premlala (supra) is that, the defect of mis-joinder of parties and cause of action is not a ground for rejection of plaint. In the present suit, the defendants have filed this application to reject the plaint vide O.VII, R.11 (a) and (d) of the Civil Procedure Code. The defendants have not claimed to reject the plaint on the count of mis-joinder of parties and cause of action. Therefore, it is respectfully submitted that the abovesaid judgment of the Hon'ble Supreme Court is not helpful to the plaintiffs as well as defendants.

23. The Hon'ble Sikkim High Court in case of Durga Rai (supra) held that the plaint can be rejected only if from the statement in plaint it appears that the suit is barred by law. In the present case, it is not the contention of defendants that this Court has no jurisdiction to try and entertain the suit. It is the contention that the suit is not within the limitation.

24. The issue of limitation is mixed question of law and facts. So also, without recording the evidence of the parties, issue of limitation can not be decided at all.

25. As earlier mentioned, the plaint discloses the specific cause of action. Furthermore, the issue of limitation for filing the suit cannot be decided without any evidence of the parties on record. Therefore, the plaint cannot be rejected at this stage vide the provisions of O.VII, R.11(a) and (d) of the Civil Procedure Code. Hence, the application is liable to be rejected. Consequently, I pass the following order.

ORDER

- (1) The application is hereby rejected.
- (2) The defendants are directed to proceed with the suit on next date without fail.

Date: 08th Sept., 2015

(P.N.Kulkarni)
2nd Jt.Civil Judge J.D., Rahuri,
Tal.Rahuri, Dist.Ahmednagar.