

ORDER BELOW EXH. 19 IN SPL. C. S. NO. 25/2021.

(CNR : MHAH23-000353-2021)

01. Defendant has filed an application under O. 7, R. 11(d) of Civil Procedure Code (In short C.P.C.) to reject the plaint. Say of plaintiffs is called. They have filed their say vide Exh. 22 and objected the application.

02. It is argued on behalf of the that defendant that plaintiffs have filed suit to get sale deed executed in view condition in sale deed dated 07/11/2013 and for permanent injunction against him in respect of suit property. It is further argued that he and plaintiffs are neighborers and resident of same village. It is further argued that as plaintiffs were in need of money in the year 2013 and they want to sell suit property. It is further argued that plaintiffs given advice to him to sell his dry land at Mauje Bhole, Tal. Karjat, Dist. Ahmednagar and purchase suit property. It is further argued that plaintiffs themselves took initiative to sell property of the defendant and took all consideration amount for their monetary need. It is further argued that thereafter, the plaintiffs dishonestly and deceiving the defendants executed sale deed of suit property on 07/11/2013 in his favour for consideration of Rs. 10,00,000/-. It is further argued that one of the alleged condition of said sale deed was '*if in future the defendant wants to sell suit property, he has to sell it to the plaintiffs for same consideration*'. It is further argued that said condition is against law and against principle of natural justice. It is further argued that as he is need of money therefore, he wants to sell suit property. It is further argued that accordingly, he informed the plaintiffs however, they refused to purchase suit property as per market value and demanded to sell it as per Government value.

03. It is further argued that therefore, he has to execute agreement to sell with third person namely, Santosh Rajaram Kale, resident of Takli, Tal. Shrigonda. It is further argued that as said purchaser and mediator has executed wrong agreement to sell therefore, it was cancelled and other agreement to sell it executed before notary. It is further argued that plaintiffs came to know said fact therefore, they sent notice to him through advocate and demanded to sell suit property to them in view of sale deed dated 07/11/2013. It is further argued that plaintiffs have executed sale deed bearing No. 3829/2013, dated 07/11/2013 with condition that in the future, if the defendant wants to sell it, he has to sell said property to plaintiffs. It is further argued that this condition itself is illegal and against public policy. It is further argued that such type of agreement is not tenable in law. It is further argued that pleadings of the plaintiffs in plaint is contrary to said sale deed. It is further argued that therefore, suit is barred by law in view of O. 7, R. 11(d) of C.P.C. Hence, suit may be rejected.

04. On the other hand, it is argued on behalf of plaintiffs that application filed by the defendant is not legal and proper. It is further argued that contents in the application are denied. It is further argued that if sale deed was illegal or condition was against law, the defendant ought to have challenged it or made complaint since 2013 till filing of his written statement. It is further argued that it is settled law that while considering application under O. 7, R. 11 of C.P.C. pleadings has to be considered. It is further argued that suit is for specific performance of contract. It is further argued that in sale deed dated 07/11/2013, condition is laid down that if defendant wants to sell suit property, he has to sale it to the plaintiffs. It is further argued that said condition is not against principle of natural justice, it is like preferential

right of plaintiffs to purchase said property. It is further argued that form contention in the present application, it can be seen that defendant wants to sell suit property. It is further argued that therefore, they have issued notice dated 31/05/2021 to the defendant. It is further argued that if the defendant is claiming that suit is barred by law, he has to specifically plead under which law it is barred. It is further argued that the defendant has not specifically pleaded such fact.

05. It is further argued that maintainability of suit cannot be decided at this stage and it has to be considered in view of O. 14, R. 2 of C.P.C. It is further argued that they have relied on ratio laid down in **New India Assurance Co. Ltd. vs. M/S. Sesa Goa Ltd.**, reported in **2020 (5) Mh.L.J. 66**, wherein Hon'ble Bombay High Court has observed that,

'Objection as to maintainability of suit must be raised in written statement by defendant. Such objection ought not to be allowed to be raised at appellate stage.'

They have relied on ratio laid down in **Mrs. A. Kanthamani vs. Mrs. Nasreen Ahmed**, reported in **2017 SAR (Civil) 451**, wherein Hon'ble Apex Court has observed that,

'It is well settled principle of law that the plea regarding maintainability of suit is required to be raised in the first instance in the pleadings (written statement) then only such plea can be adjudicated by the Trial Court on its merits as a preliminary issue under O. 14, R. 2 of C.P.C.'

They have relied on ratio laid down in **Rajendra Bhaiyyaji Zade and Ors. vs. Harbanssingh Jawantsingh Siddhu**, reported in **2019 (3) ALL MR 124**, wherein Hon'ble Bombay High Court, Bench at Nagpur has observed that,

'Rejection of plaint on the ground that suit is barred

by S. 34 of Specific Relief Act as relief of possession was not claimed. Suit for declaration of right and title filed by the plaintiff against his sister. Plaintiff claiming suit property was purchased by him in name of his sister but he is in possession of suit property. Plaint is of pleadings regarding possession of plaintiff in suit property. Defendant dispute regarding possession of plaintiff becomes matter of trial.'

06. They have relied on ratio laid down in **Narayana Farm Produce Pvt. Ltd., Nagpur and Others vs. Jalaram Feeds, Nagpur**, reported in **2018 (3) Mh.L.J. 293**, wherein Hon'ble Bombay High Court has observed that,

'Rejection of plaint sought on ground based on merits of matter cannot be considered while exercising power under O. 7, R. 11 of C.P.C. Trial Court was justified in rejecting objection in that regard.'

They have further relied on ratio laid down in **Govind Goverdhandas Daga and another vs. Field Mining And ISPAT Ltd., Nagpur and another**, reported in **2009 (6) Mh.L.J. 398**, wherein Hon'ble Bombay High Court has observed that,

'The phrase 'barred by law' means when a party alleges that the plaint should be rejected under O. 7, R. 11(d), it must show a provision in a particular legislation prohibiting Civil Court from entertaining the dispute or it must show from the scheme of the Act that an alternate forum and remedy is provided.'

It is further argued that thus in view of ratio laid down in case laws cited supra issue of maintainability cannot be decided at this stage. It is further argued that Civil Court has jurisdiction to try all matters in view of Section 9 of C.P.C. unless it is expressly or impliedly barred. It is further argued that the defendant has not shown under which law suit is barred. It is further argued that the defendant has failed to make out circumstances to reject the plaint. Hence, application may be rejected.

07. Perused application, say and record. Heard both the parties. I have gone through case laws cited on behalf of the plaintiffs. On perusing record, it appears that plaintiff has filed suit for specific performance of contract on and perpetual injunction against defendant. Further, the defendant has filed his say and written statement vide Exh. 17 and denied the pleadings of the plaintiff. It appears from pleadings of the parties that it is not disputed that suit property originally belongs to the plaintiffs and they have sold to the defendant vide sale deed bearing No. 3829/2013, dated 07/11/2013. However, it appears that the parties are having contrary pleadings regarding consideration amount of sale deed dated 07/11/2013. It is not the issue to be considered at this stage. It appears that the defendant has filed present application on the ground that condition in sale deed dated 07/11/2013 regarding repurchase of suit by the plaintiffs, itself is illegal and contrary to principles of natural justice therefore, suit may be rejected under O. 7, R 11(d) of C.P.C. Further, it is the contention of the defendant that in view of said condition plaintiffs have asked to sell suit property for same consideration as in sale deed dated 07/11/2013. It is pertinent to note that plaintiffs have filed copy of said sale deed vide list Exh. 3 at Sr. No. 6. On perusing said sale deed, it appears that in para 4, there is recite that 'तसेच लिहुन घेणार यांना सदर जमीन भविष्यात विक्री करावयाची झाल्यास ती परत लिहुन देणार यांना विक्री करावयाची आहे'. It is pertinent to note that there is nothing in recite that suit property has to sell for same consideration. However, said fact is to be decided on merits.

08. The defendant has filed present application under O.7, R.11(d) of C.P.C. to reject the plaint. It is pertinent to note that O.7,

R.11(d) of C.P.C. provides that the plaint shall be rejected 'where the suit appears from the statement in the plaint to be barred by any law'. Hence, in order to decide whether the suit is barred by any law, it is the statement in the plaint which will have to be construed. It is not necessary to consider the defence of the defendant in the written statement. As per Section 9 of C.P.C. Civil Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. As discussed above, it appears that the defendant has filed present application on the basis that the condition in sale deed dated 07/11/2013 to repurchase suit property by the plaintiffs is illegal and contrary to law therefore, suit is barred by law. It is pertinent to note that the defendant has not specifically contended in the application under which law suit is barred. It is vaguely contended by the defendant that it is against the principle of natural justice. Therefore, I am of the view that ratio laid down in **Govind Goverdhandas Daga and another's** case law cited supra is applicable to the facts of present case. It has been observed that 'when a party alleges that the plaint should be rejected under O. 7, R. 11 of C.P.C. it must show provision in a particular legislation prohibiting Civil Court from entertaining the dispute or it must show from the scheme of the Act that an alternate forum and remedy is provided.' Admittedly, the defendant has not shown any such provision.

09. So far as issue of maintainability is concerned, though it is argued on behalf of the plaintiffs and relied on case laws cited supra, it is pertinent to note that the defendant has not given emphasis on said aspect. Therefore, case laws cited on behalf of the plaintiffs on the said aspect are not applicable to the facts of the present case, at this stage. Further, said aspect will be considered on merit during trial. Thus, it appears from record that the defendant has failed to bring material on

record to show that the suit is barred by any specific law. Therefore, I am of the view that he is not entitled for relief as claimed. Hence, I proceed to pass following order.

ORDER

1. Application at Exh. 19 is hereby rejected.
(Dictated and pronounced in open Court.)

Shrigonda.
Date : 30/10/2021.

(Sangram S. Shinde)
Civil Judge, Senior Division,
Shrigonda.