

ORDER BELOW EXH. 15 IN R.C.S.NO.64/2016

1] The defendant has filed the present application under Order 7 Rule 11 of the Code Of Civil Procedure for rejection of plaint. The plaintiff resisted the application by filing say at Exh.16.

2] Perused application and say. Heard Ld. Advocate for the respective parties. It is the contention of the defendant that there is no cause of action for filling suit. The suit is under valued and proper court fee stamp is not paid. The suit is barred by law of limitation. The plaintiff has not complied the provision of Order 7 Rule 9 of the C.P.C. and not complied Order 5 Rule 2 (b) of Bombay Amendment to C.P.C. Therefore, it is prayed that plaint be rejected.

3] Per contra, the Ld. Advocate Mr. Raut for plaintiff submitted that, specific cause of action is mentioned in the plaint. The suit is properly valued. All the necessary formalities are followed. The application is filed only to prolong the matter. The suit is well within limitation. It is submitted that, without submitting written statement and say, defendant is trying to prolong the matter by filling such application.

4] At the outset, I would mention that while dealing with the application under Order 7 Rule 11 of the C.P.C., the averments made in the plaint are only to be looked into. It is not necessary to go into the defence. On perusal of the plaint, plaintiff has pleaded cause of action in paragraph 8. It is mentioned that, cause of action arose on 10-07-2016, when the defendant demolished his own house and tried to take possession of suit lane. Therefore, in my view it can not be said that plaint do not disclose any cause of action.

5] It is submitted that, suit is under valued and proper court fee stamp is not paid. On perusal of plaint, it is seen that, this is a suit for permanent injunction. Accordingly, it is valued as Rs.1000/- and court fee stamp of Rs.200/- is affixed. Hence, it can not be said that suit is under valued.

6] Thirdly it is submitted that suit is not within limitation. But, defendant has failed to mention as to how the suit is not within limitation. Relying on the cause of action made in the plaint, it appears that suit is within limitation. So also, the issue of limitation is mixed question of law and fact and it can be decided after the trial. Hence, at this initial stage, it can not be said that suit is barred by law of limitation.

7] On perusal of recorded, plaintiff has complied the provision contemplated under Order 7 Rule 9 of the C.P.C. and Order 5 Rule 2 of C.P.C.

8] Having regard to the above discussed aspects, I do not find any merit in the application of the defendant. The plaint can not be rejected. Hence, I pass following order :

ORDER

Application Exh.15 is rejected.

Date : 27.10.2016

Barshitakli.

(Paresh R.Wagdole)

Civil Judge (Jr. Dn.)

Barshitakli.

Certificate

I affirm that the contents of this P.D.F. File are same word for word as per original order.

Name of Steno : Mrs. Hemlata N. Dahake, Steno
Court Name : Civil Judge (Jr.Dn.) & J.M.F.C.,
Barshitakli

Date : 27-10-2016
Signed by Presiding Officer : 27-10-2016

Uploaded on : 10-11-2016