

Regular Civil Suit No. 06/2019

Bhushan V/S Ushabai

ORDER BELOW EXH-11

(Passed On 2nd December 2022)

By present application the defendant sought rejection of plaint taking recourse of Order VII Rule 11 (d) of the Code of Civil Procedure 1908 assailing the ground that the suit instituted by the plaintiff is barred by the law of limitation.

2. The defendant asserted that the relief of possession is claimed on the basis of Gift Deed dt 21.06.1991 and the suit is filed after 27 years from the date of Gift Deed. The next ground which is raised is that if the plaintiff is seeking exemption of disability, then the pleadings to that effect should have been incorporated, however the plaintiff failed to provide such explanation. It is further averred that as the plaintiff was minor when the gift deed was executed, he had to after attaining the majority within three years should have instituted the suit and as such the suit appears to be have been barred. Accordingly, prayed rejection of paint.

3. The plaintiff filed his reply vide **Exh-12** on record and resisted the application on the ground that in para no2 of the plaint the plaintiff has specifically averred about the fact of minority. It is further replied that the suit is instituted within 12 years from attaining the majority and as per Article 65 of the Limitation Act 1963 the suit is well within limitations. Hence, prayed to reject the application.

4. The learned counsel for the defendant has filed the written notes of argument on record vide **Exh-13** and submitted that the plaintiff was

never been put in possession of the property and his possession was not actual, however it was taken on his behalf. Hence, after attaining the majority the plaintiff should have instituted the suit within three years from attaining the majority.

6. Per contra the learned counsel for the plaintiff argued that on the basis of title the possession is claimed when it becomes adverse to the plaintiff. According to him when the mutation was rejected the possession of the defendant becomes adverse to him. Hence, as per Article 65 of the Limitation Act 1963 the suit is well within limitation.

7. I have taken the following points for my discussion and recorded my findings accordingly.

Sr. no.	Points	Findings
1	Whether the plaint appears to be barred by law of Limitation?	--No--
2	What order?	

REASONS

As to point no.1; -

5. It is pertinent to note that Order VII Rule 11(d) of the Code-1908 provides that where from the averments made in the plaint the suit appears to be barred by any law leads to rejection of plaint. Thus, only the statement made in the plaint requires to be considered while deciding the application. Even the written statement of the defendants and allegations made in the application cannot be taken into account while dealing with the application. Imperatively, plaint reflects that the suit is instituted for possession claiming on the basis of Gift-deed dt 21.06.1991. In such circumstances what the averments made in plaint transpires is

that the possession is claimed on the basis of title and in such cases Article 65 of the Limitation Act 1963 gets attributed. The main contention of the defendant is that the suit should have been instituted within three years from attaining the majority. Imperative to mention here that the question of limitation is a mixed question of fact and law. It needs to adjudicate on evidence at trial. Thus, suit merely being filed after lapse of years cannot form the ground to reject the plaint. Such doctrine of delay and laches needs be examined at the time of trial. Moreover, the plaint does not contain statement in such manner by which it can be inferred that the suit is barred by limitation. Thus, apparently on the face of plaint the suit does not appear to be barred by the law of limitation.

8. So far as the contention as regards compliance of Order VII rule 6 is concerned said provision always expects that if period of limitation is expired and the plaintiff due to some disability failed to institute the suit within the period of limitation generalise under the Act 1963 i.e. Schedule and if the plaintiff intends to bring such suit after period of limitation claiming the exemption provided under the law, then only this particular provision comes into picture. In the case the plaintiff has not averred or claimed that the suit is instituted after expiry of limitation and even the averments do not disclose that any such exemption is claimed, resultantly, the said provision is not applicable to the averments of plaintiff. Accordingly, I answered this point in negative.

As to point No.2

13. So far as the question of imposing cost of the application is concerned the defendants have every right to file such application therefore the question of imposition of cost needs to be put in cause.

12. Hence, the following order.

ORDER

- i. The application is rejected.
- ii. Cost will follow the event

Telhara
02.12.2022

(R. A. Rannaware)
Jt. Civil Judge(Jr. Dn.) Telhara

Certificate

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

Name of Stenographer	: V. M. Nawle
Court Name	: Jt.C.J.J.D. & J.M.F.C.,Telhara
Date	: 02.12.2022.
Signed by presiding officer on	: 02.12.2022
Uploaded on	: 03.12.2022