

MHAU090005862023



Common Order below Exh.23 in RCS No. 78/2023

The defendant nos. 1, 2, 5 to 7 and defendant nos. 3 and 4 have moved the present application under Order VII Rule 11 of Code of Civil Procedure and prayed for rejection of plaint. They contended that, the suit is for partition and other ancillary reliefs. Defendants have contended that the suit properties are not joint family properties. Deceased Natwarlal Saraf had already partitioned the said properties in the year 1976-1977 and allotted suit properties to his step mother deceased Sarsawtibai. Therefore, suit of plaintiff required to be filed within 12 years from the year 1977. But present suit has been filed in the year 2023, hence, suit is expressly barred by provisions of limitation Act. Plaintiff was in knowledge of the alleged overt act. Question of limitation is pure question of law, which can be traced out on mere reading of plaint. Suit filed by plaintiff is against provisions of limitation. They further contended that deceased Sarsawatibai was exclusive owner of the suit properties. During the lifetime of Sarswatibai, she had partitioned the suit properties in the name of her grand sons' i.e. defendant no.1 Jagdish and deceased Mahendra i.e. husband of defendant no.5 and father of defendant nos. 6 and 7. Therefore the suit properties are self-acquired properties of defendant no.1 and defendant nos. 5 to 7. There is no cause of action to file the instant suit. Hence, prayed that the plaint be rejected as per order VII Rule 11 (a) and (d) of CPC.

3) The plaintiff has filed her say and denied the contentions of defendants. Per contra contended that, the application is not tenable in law, the application is vague,

incomplete and is filed only with intend to prolong the matter. They further contended the grounds raised by the defendants can be very well decide after evidence of parties. Limitation is mixed question of fact and law, the same cannot be rejected u/o. 7 Rule 11. Hence, she prayed for rejection of application.

4) Heard both parties. Applications given by defendants are based on ground that there is no cause of action and the suit is not filed within limitation. It is well settled that the application u/o 7 R. 11 needs to be decided on the contentions in the plaint. Here, defendant prayed for rejection of plaint on the ground that the suit is barred by law of limitation. But issue of limitation cannot be decided on the basis of plaint only, limitation is based upon cause of action and cause of action is decided only after evidence and not solely on the grounds in plaint. Submission of plaintiff is considerable that is limitation is not purely question of law but mixed question of fact and law is acceptable. Plaint in to is to be read.

5) Defendants raised another ground that suit filed by plaintiff is without cause of action hence, suit is liable to be rejected. After going through the grounds, it is clear that all the grounds are factual one and can be considered only after evidence of the parties. At this juncture only the averments made in the plaint has to be seen. Therefore, it is apparent that plaint cannot be rejected on the basis of the allegations made by the defendants in their written statement or in an application for rejection of the plaint. The court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code.

6) Moreover, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of

facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, willful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, do disclose the cause of action. So, considering the contentions of plaintiff, nature of dispute I hold that the grounds raised by the defendants cannot be considered.

7) Considering all above aspect, I hold that the present application is devoid of merits and hence liable to be rejected. Hence, I proceed to pass the following order.

ORDER

- 1) Application stands rejected.
- 2) No order as to costs.

Paithan,

Date :- 07.10.2023.

(Aparna C. Rokade)

**Civil Judge, Junior Division,
Paithan, Dist. Aurangabad.**

CERTIFICATE

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

Name of Stenographer : Sarika S. Gondre
Court : C.J.J.D.at Paithan.
Date : 07.10.2023
Order signed by the
Presiding Officer on : 07.10.2023
Order uploaded on : 07.10.2023