

ORDER BELOW EXH.74

(Passed on 19/10/2020)

This is an application filed by opponent No. 3 (i) & (ii) for rejection of plaint under O.7 R.11 of the Code of Civil Procedure (hereinafter referred to as the "C.P.C.").

2. Perused the application (Exh.74) and say filed by disputant and opponent No.1. Heard learned advocates for both the parties.

3. The dispute is filed for declaration that the resolution No.4 passed by opponent No.1 society cancelling the allotment of suit plot No. 111 as illegal, arbitrary and bad in law and to set aside the same. It is also prayed to declare the execution of sale deed dated 15/11/1979 in favour of opponent No. 3 as bad in law and against the provisions of M.C.S. Act, 1960 and to quash and set aside the said sale deed.

4. It is contended that the dispute is not at all maintainable and there is no cause of action to file the present dispute and the dispute is barred by law of limitation prescribed under Section 92(1) of the M.C.S. Act, 1960 read with Limitation Act, 1963. It is also contended that the disputant is claiming the jurisdiction of this court under sections 91 and 92 of the M.C.S. Act is not at all available. It is submitted that opponent No.3 is the member of opponent No.1 society. The plot No.111 was allotted to the disputant on 13/05/1967 and the sale deed was executed in his favour. However on 2/09/1967, State Government vide notification has given control to N.I.T. over the entire area in which plot No. 111 was situated. Therefore, on

16/07/1973 opponent No.1 society handed over the possession of entire land to N.I.T.

5. It is further contended that on 24/01/1978 notices were sent to all the members for purchasing plots at Kh. No. 20, Hiwari Lay-out, Nagpur. But disputant failed to en-cash this opportunity. On 15/11/1979 opponent No.1 society executed sale deed of disputed plot i.e. plot No. 111 in favour of opponent No.3. On 27/07/1980 opponent No.1 society by passing resolution cancelled the plots allotted to members who have failed to make payment of Rs. 1,000/- and more due towards the society. On 27/5/1985, N.I.T. made lease deed of plot No. 111 in favour of opponent No.1 society. On 17/09/1985 opponent No.1 society made registered relinquishment deed in favour of opponent No.3. On 5/12/1986 N.I.T. made a mutation in the name of opponent No.3.

6. On 15/11/1998 opponent No.1 society passed another resolution to allot plot No. 42 and 53 situated in Kh. No. 4/5, Mouja Chikhali. The disputant gave his bid offer in writing to buy plot No.42 on 17/12/1998 in which he specifically stated that, he has not received any plot from society. The bid offer of disputant was accepted but he failed to make required payment within stipulated time and therefore his claim could not survive. All the above facts are suppressed by the disputant in his dispute. Entire lay-out is owned by N.I.T. The dispute has been filed on erroneous assumptions made by disputant. There is no cause of action to file the dispute. The alleged resolution No.4 was passed on 27/07/1980 which is

challenged in the present dispute is barred by law. Therefore, applicants prayed for rejection of plaint.

7. Disputant opposed the application by filing his say. He contended that the issue on the point of limitation is already framed below Exh.24 which is to be proved by opponent No.1 society. Cause of action is a bundle of facts and therefore it cannot be decided without examining the parties. Present application is filed at belated stage. No prejudice will be caused to the applicant/opponent No.3 if the points of limitation, jurisdiction and cause of action will be decided on merit. Opponent No.1 filed his say and submitted that, present dispute is hopelessly barred by limitation. Thus he supported the pleadings of applicant i.e. opponent No.3.

8. Heard learned Advocates for the applicant/opponent No.3 and the disputant at length. Read the plaint minutely.

9. In support of his argument learned Advocate for applicants relied on the following case laws :

1. *Rok Roja Vs. U.S.Rayudu; (SC) Civil Appeal No. 5540/2016.*
2. *Saleembhai Vs. State of Maharashtra; 2003(1) SCC 557.*
3. *Sopan Sukhdeo Sable and others Vs. Asstt. Charity Commissioner and others; 2004(3) SCC 137.*
4. *Popat and Kotecha Property Vs. SBI Staff Association; 2005(7) SCC 510.*

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5. *T. Arivandandam Vs. T. V. Satyapal and another; 1977(4) SCC 467.*
6. *Bloom Dekor Ltd. And another Vs. Subhash Himatlal Desai and others; 1994 (6) SCC 322.*
7. *ABC Laminart Pvt. Ltd. And another Vs. A. P. Agencies; (1989) 2 SCC 163.*
8. *Hardesh Ores (P) Ltd. & Ors Vs. Hede and Company; 2007(5) SCC 614.*
9. *Mariya Margarida Sequeria Fernandes and others Vs. Erasmo Jack de Sequeria (Dead) through L.Rs. SC Civil Appeal No. 2968/2012.*

10. In support of his argument learned Advocate for disputant relied on *Hindustan Petroleum Copn. Ltd. Chennai Vs. T. Aditya Rao and 1 another, application No. 2239 of 2013* decided on 11/02/2014 by Hon'ble Madras High Court.

11. Considering above submissions of the parties, I am framing following points and giving my finding thereon, as under:

Sr. No.	Points	Findings
1	Whether the plaint is liable to be rejected for want of cause of action ?	No
2	Whether the plaint is liable to be rejected as the dispute is barred by law of limitation ?	No
3	Whether the plaint is liable to be rejected as this court has no jurisdiction to try and entertain the dispute ?	No
4	What order ?	Application is rejected.

REASONS

12. It is well settled that for the purpose of deciding the application under O.7 R.11 of the C.P.C., only averments stated in the plaint alone can be looked into and merits and demerits of the matter and the allegations by the parties cannot be gone into. So keeping in mind the settled position of law I will deal this application.

13. I have closely scrutinized the averments made in the plaint. From the averments in the plaint the story of disputant is that the opponent No.1 is a co-operative housing society whose purpose is to purchase the land and to sale its plot to members and to protect the rights of members. The

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disputant is the member of opponent No.1 society since 26/12/1965. He had purchased a vacant plot No.111 for construction of residential house from opponent No.1 society on 13/05/1967. Opponent No.1 had executed the registered sale deed of said plot on 13/05/1967 in favour of the disputant and handed over the vacant possession of said plot to the disputant. Thus the disputant became an exclusive owner with clear title and interest of plot No.111.

14. Disputant being an aged and paralytic patient was unable to visit the said plot frequently. He was waiting for the letter of lease deed from N.I.T. through opponent No.1 for confirming the regularization of the said plot. He was also waiting for a letter in respect for demand of development cost for the said plot so that he would be able to carry out construction on the said plot. In the third week of October, 2009 the disputant visited through his power of attorney holder Smt. Pranali Kalbande to the said plot, it was shocking and surprising that the said plot No. 111 was unlawfully dispossessed by opponent No.3 by raising construction on the said plot.

15. On next day the disputant through his power of attorney holder visited the office of opponent No.1 to seek clarification about the above facts. But the office bearer of opponent No.1 denied to redress his grievance and to restore his possession of plot No.111. Thereafter the disputant lodged police complaint at P. S. Sakkardara, Nagpur on 18/12/2009. After the investigation by police, disputant came to know that, behind his back, opponent No.1 cancelled the allotment of plot No.111 to the disputant by

passing committee resolution No.4 on 27/07/1980. He also came to know that, opponent No.2, ex-president of opponent No.1 society, without passing any resolution transferred the said plot No.111 in favour of opponent No.3 and malafidely executed the registered sale deed on 15/11/1979. At that time the earlier sale deed dated 13/05/1967 in favour of the disputant was in force. He also came to know that, the N.I.T. Nagpur had much earlier on 27/05/1985 had already issued a lease deed letter in the name and address of opponent No.1 society by regularizing the suit plot with minor alterations in its boundaries. Said letter was intentionally suppressed from the disputant.

16. The disputant sought inquiry under Section 83 of the M.C.S. Act, 1960 by the Deputy Registrar, C.S. Nagpur City-II. In the said inquiry it was held that, opponent No.1 society has acted illegally and contrary to the provisions of law and bye-laws while cancelling the suit plot and transferring and executing the subsequent sale deed dated 15/11/1979 in favour of opponent No.3. The disputant could not construct his dwelling house on the said plot due to above omissions caused on the part of opponent No.1 society. Opponent No.3 was well aware about the sale deed dated 13/05/1967 and about the ownership of the disputant. Eventhen he had purchased the said plot No.111 without consulting the disputant. The disputant is lawful owner of the said plot No.111. Opponent No.1, in collusion with the opponent No.3 committed cheating and fraud against the disputant.

17. Legal notice was sent to the opponents on 24/12/2010 through advocate of disputant for the cancellation of subsequent sale deed dated

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17/09/1985 and to vacate the unlawful possession of said plot. The cause of action of the present dispute firstly arose in the third week of October, 2009 when the disputant came to know about his dispossession and construction by opponent No.3. Thereafter the cause of action arose on 8/05/2010 when the F.I.R. was registered against the opponents. It again arose on 24/12/2010 when the legal notice was sent to the opponents. In spite of the receipt of legal notice, opponents failed to discharge their legal obligation and therefore the disputant is constrained to file the present dispute.

POINT NO. 1:-

18. So far as the point of cause of action is concerned it is contended by the applicant/opponent No.3 that there is no cause of action to file the dispute. The disputant has suppressed the material facts from court. The alleged resolution No.4 which is challenged by disputant in the present dispute was passed on 27/07/1980. No objection was raised by the disputant for cancellation of allotment of plot. Moreover he has filed fresh application on 17/12/1998 for allotment of plot No.42 at khasra No. 4/5 at mouza Chikhli therefore there is no cause of action after 36 years.

19. After going through the plaint Exh.1, it reveals that the disputant contended in his pleadings in paragraph No. 5 that he came to know about his dispossession and possession of opponent No.3 in October, 2009 when his power of attorney holder visited the said plot No.111. It is further contended in paragraph No.6 that he came to know about the facts mentioned by opponents through police when he lodged report to

Sakkardara Police Station. Thus the cause of action is specifically mentioned by the disputant in his pleadings.

20. In ***Rok Roja (supra)***, relied on by the opponent, maintainability of the application is discussed however with due respect to the law laid down, the question of maintainability of the application is not before me. In ***Saleembhai (supra)***, Hon'ble Supreme Court held that a direction to file a written statement without deciding the application under O.7, R.11 C.P.C. cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. In the case in hand, no such directions are issued. In ***Sopan (supra)***, Hon'ble Supreme Court held that while deciding the application under O.7, R.11 C.P.C., averments in the plaint are germane and pleas taken by defendant in written statement would be wholly irrelevant at this stage. It is now a settled position and helpful to the opponent.

21. In ***T. Arivandandam (supra)***, Hon'ble Supreme Court held that if on meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, the power under O.7, R.11 C.P.C. should be exercised taking care that the ground mentioned therein is fulfilled. With due respect, it is not possible in the present case at this stage to infer that the ground mentioned is fulfilled. Therefore it is not helpful to the opponent at this stage. In ***Bloom (supra)***, Hon'ble Supreme Court held that cause of action means a bundle of facts, which would be necessary for the plaintiff to prove in order to succeed in the suit. During trial the disputant has to prove the same in the case in hand also. The similar view is expressed by Hon'ble Supreme Court in ***A.B.C.***

Laminart (supra). In *Hardesh (supra)*, Hon'ble Supreme Court referred the judgment of *I.T.C. Ltd. Vrs. Debt Recovery Tribunal ; (1998) 2 SCC 70* in which it is held that the clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. In the case in hand, at this stage, no such illusion can be inferred. Therefore with due respect, these judgments are not helpful to the opponents at this stage.

22. As discussed above the cause of action is specifically mentioned in the pleadings of disputant i.e, Exh.1. However, whether disputant really has any cause of action or not can only be decided after full dressed trial and not before it. When plaint discloses cause of action it cannot be rejected by virtue of Order 7 Rule 11 of the C.P.C. So there is no substance in the contention of applicants that there is no cause of action to file the dispute. Therefore in view of above discussion, I answer point No.1 in the negative.

POINT NO. 2:-

23. So far as the contention of opponent/applicant that dispute is not within limitation is concerned, he contended that the resolution No.4 was passed on 27/07/1980 which is challenged in this dispute and dispute is filed in 2011 i.e. after the period of 31 years. The sale deed executed on 15/11/1979 in favour of opponent No.3 is also challenged in this dispute. However it should have been challenged within six years from 15/11/1979 as per M.C.S. Act, 1960 and within three years as per Limitation Act, 1960.

But the sale deed dated 15/11/1979 is challenged after 32 years which is beyond limitation.

24. It is specifically pleaded in the plaint that the disputant came to know through police after filing police report on 18/12/2009 about the passing of resolution and execution of sale deed. Thereafter on 24/12/2009, disputant issued a legal notice to opponents. It is contented that the cause of action for filing the dispute is continuously running day to day and the dispute is filed well within limitation.

25. As per section 92 (b) of the M.C.S. Act, *when the dispute is between society and its member or past member and if it relates to any act or omission on the part of either party, limitation for filing dispute is six years from the date on which the act or omission with reference to which the dispute arose, took place.* I have to see that whether the cause of action was continuous as alleged by the disputant. Then only I can come to the conclusion about the date of act or omission and it needs to be decided on merit.

26. In *Popat (supra)* relied on by the opponents, Hon'ble Supreme Court held that the court should exercise the power under Order 7, Rule 11 of the Code taking care to see that the ground mentioned in the plaint are fulfilled. In the same case, it is also held that Clause (d) of Order 7 Rule 11 applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force. In the case in hand, at this stage, it is not possible to say that the

suit is barred by any law. Thus the above judgment is helpful to the disputant and not the opponents. In *Hindustan Petroleum Corp. (supra)* relied on by the disputant, the above judgment is referred by Hon'ble Madras High Court. In *Hardesh (supra)*, Hon'ble Supreme Court held that "Law" within the meaning of clause (d) of Order 7, Rule 11 must include the law of limitation which is now a settled position.

27. It is true that the limitation can be the ground for rejection of plaint in exercise of powers under O.7 R.11, C.P.C. However it is equally true that question of limitation need not necessarily be a pure question of law. Thus, the above stated facts being the disputed question of fact and Law are required to be proved by the parties by leading evidence to that effect. Therefore, I am of the view that, instead of rejecting the plaint at its threshold on the ground of limitation, the issue of limitation be adjudicated upon thoroughly by giving opportunity to both the parties to lead their evidence on this issue if any. Moreover on perusal of Exh.24, it reveals that my learned predecessor has already framed the issue of limitation at issue No.7. As such, the plaint cannot be rejected on this ground. Hence I answer point No. 2 in the negative.

POINT NO.3

28. So far as the point of jurisdiction is concerned, applicants have made only a bald statement that the disputant is claiming jurisdiction of this court under sections 91 and 92 of the M.C.S. Act, 1960 which is not available. However it is undisputed that the opponent society is a co-operative society and disputant is member of that society. Applicants have

not pointed out as to how this court has no jurisdiction. Making only a bald statement that this court has no jurisdiction under sections 91 and 92 is not sufficient to reject the plaint. Moreover reading the plaint, prima facie reveals that the dispute is between society and its members touching the business of the society and therefore as per section 91, M.C.S. Act, this court has jurisdiction to try the dispute. Therefore the submission of applicants that this court has no jurisdiction lacks substance. Hence I answer point No.3 in the negative.

POINT NO.4

29. As discussed above, all the issues of cause of action, limitation and jurisdiction can be decided on merit and not at this stage. In view of the above discussion, all objections raised by the opponent No.3/applicant for rejection of the plaint are not sustainable. In *Maria (supra)* relied on by the opponents, Hon'ble Supreme Court observed that truth is the foundation of justice which is applicable to every case. In the case in hand, to find out the truth it is necessary to conduct the trial. With these observations, I come to the conclusion that there is no merit in the application and it deserves to be rejected. Hence, in answer to Point No.4, I pass the following order :-

ORDER

Application Exh.74 is hereby rejected.

Nagpur
Date : 19/10/2020


(Smt. S.B. Ghute)
Judge,
Co-operative Court, Nagpur.