

MHGA040003082021



R.C.S.No.8/2021
Sapon .Vs. Lalita+2
CNR No.MHGA040003082021

ORDER BELOW EXH.NO.20
(Passed on dated 02.03.2022)

The defendant has filed present application under Order VII Rule 11 of the Code of Civil Procedure.

2. It is contention of the defendant that the present suit is instituted for declaration, injunction and possession. The suit is not within limitation. The plaintiff has knowledge of the gift deed in year 2015-16. The plaintiff or his father is required to institute the suit till 2019. It is further contended that in the month of June 2018, the father of plaintiff applied to the bank for loan. The bank has given loan on 15.6.2018. That's why plaintiff and his father has a knowledge about the gift deed. But they did not institute suit within limitation since that also. It is further contended that the mutation entry in respect of Will Deed is certified on 13.6.2003. Father of plaintiff put his thumb impression at that time on mutation register. But, they did not institute suit within limitation since that also . Hence, prayed for rejection of plaint.

3. The plaintiff filed their reply at Exh.No.22 and objected the application. It is contention of the plaintiff that his father told him about the misconduct of defendants in the year 2019. Then, the plaintiff obtained old 7/12 and mutation extracts on 22.2.2021. Furthermore, his son applied for certified copy of Will Deed from Sub-Registrar office, Armori on 25.3.2021. The said office issued certified copy on 5.4.2021. The suit is

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within limitation as per Article 59 of the Limitation Act, 1963. The suit is also instituted for declaration that Will Deed is illegal as void. The suit is also within limitation as per Article 56 and 58 of the said Act. Hence, prayed for rejection of the application.

4. Heard learned advocates for both sides. As per contention of the defendant the suit is not within limitation. It is pertinent to see the pleading of the plaintiff in the plaint. As per pleading in paragraph no.8 of the plaint, it is contention of the plaintiff that in the year 2015-2016, his father instructed orally to the defendant no.1 and 2 about the terms of transaction in question. Thereafter, father of the plaintiff told the said fact to plaintiff. As per pleading in paragraph no.16 of the plaint, it is contention of the plaintiff that he obtained certified copies of old 7/12 and mutation extracts on 22.2.2021. Furthermore, his son applied for certified copy of alleged Will Deed from Sub-Registrar office, Armori on 25.3.2021. The said office issued certified copies on 5.4.2021. Considering the rival contentions of both sides, the point in respect of period of limitation is came under the mixed question of fact and law. It is depend on evidence of the parties in that respect. The objections of the defendant in reference to limitation are not sustainable at this stage. Considering above discussion and reasons, I proceed to pass following order.

: ORDER :

The application is hereby rejected.

Armori.
Date : 02/03/2022.

(R.A.Sawant)
Civil Judge Junior Division,
Armori.