

MHKO050012702015 	<u>Order below Exh.46 in RCS No.209/2015</u> Shekhar Baburao Vadgave Vs. Shantinath Tatoba Vadgave <u>CNR No. MHKO050012702015</u>
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The instant application is filed under Order VII Rule 11 (d) of the Civil Procedure Code by the defendant.

Shorn of unnecessary details brief facts leading to the filing of instant application are as follows :-

2. The plaintiff has filed the instant suit seeking relief of specific performance of contract. According to the plaintiff, the suit property mentioned in paragraph no.1 of the plaint was agreed to be sold by the defendant in favour of the plaintiff and accordingly an agreement to sell was executed on 26/12/2007.

3. According to the defendant, the suit filed by the plaintiff is completely based upon agreement to sell dated 26/12/2007 and as per clause 6 of the said agreement, it was agreed between them that the time frame to perform part of the contract would be a period of three months. If necessary permissions are not sought in the said time frame then there would be non-performance clause in effect. According to the defendant, the suit filed by the plaintiff is barred by limitation as the agreement is of the year 2007 and suit has been filed in the year 2015. The defendant further submit that as per Article 54 of the Indian Limitation Act, 1963 the time frame to file the instant suit was three years however, the suit has been filed much later. The defendant lastly submitted that the limitation to file

the instant suit has therefore lapsed and accordingly in view of Order VII Rule 11(d) of the Civil Procedure Code, plaint is liable to be rejected.

4. After filing of the instant application, the plaintiff has filed reply below Exh.47. It is the contention of the plaintiff that the suit is tenable in the eyes of law. The suit is not governed under Article 54 of the Indian Limitation Act, 1963 but is governed under Article 58 of the Indian Limitation Act, 1963. The plaintiff submitted that the cause of action to file the instant suit arose after the receipt of reply notice by the defendant himself denying the execution of the agreement. The plaintiff states that the suit is within limitation and the said point is a mixed question of fact and law. The plaintiff lastly submits that the instant application is filed by the defendant with an intent to prolong the matter and he accordingly prays for rejection of the same.

5. I have heard learned counsel Mr. Chudmuge appearing for defendants as well as Mr. Desai appearing for the plaintiff. Learned counsel Mr. Chudmunge submitted in consonance with his application. He submitted that the suit is bad in law in view of Article 54 of the Indian Limitation Act, 1963. He submits that as per the clause in the agreement to sell, time frame was fixed for three months. The agreement is of the year 2007 and the suit is filed at a belated stage and therefore the suit is barred under Order VII Rule 11(d) of the Civil Procedure Code. He accordingly prays for rejection of the instant application. To bolster his stand he has placed his

reliance upon judgment of *Dahiben Vs. Arvinbhai Kalyanji Bhanusali Gajra reported in 2020 0 Supreme Court 442.*

6. Per contra leaned counsel Mr. Desai vehemently opposed the instant application on the ground that the suit is tenable in the eyes of law. He submits that the suit is within limitation as per Article 58 of the Indian Limitation Act, 1963.

7. He submits that question of limitation is mixed question of fact and law and cannot be deiced under the ambit of Order VII Rule 11 of the Civil Procedure Code. He has placed his reliance in case of *Ved Prakash Gupta Vs. Shishu Pal Singh reported in AIR 1984 ALL 288.*

8. Perused the record. Before proceeding ahead, it would be just and proper to reproduce Order VII Rule 11 of the Civil Procedure Code. Order VII Rule 11 of the Civil Procedure Code reads as follows :-

11. Rejection of plaint - “ The plaint shall be rejected in the following cases :- ”

(a) where it does not disclose a cause of action;

(b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper

within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

9. Now reverting to the hub of the matter, the real bone of contention between the parties inter se dispute is whether the suit is tenable in the eyes of law as according to the defendant, the suit is time barred.

10. It is a settled principle of law in *catena* of judgments of the Hon'ble Apex Court in which the Hon'ble Apex Court has held that when considering an application under Order VII Rule 11 of the Civil Procedure Code the averments in the plaint alone are to be examined and no other extraneous factor can be taken into the consideration.

11. Thus, it is a settled principle of law that while considering an application under Order VII Rule 11 of the Civil Procedure Code, only averments made in the plaint are required to be considered and if on a meaningful reading of the entire plaint, cause of action is

disclosed, then plaint is not liable to be rejected. It is also a settled principle of law that no defense nor any extraneous material at the instance of defendants can be looked into at this stage.

12. Upon perusal of the entire plaint, it is prima facie seen that the plaintiff and defendant had executed agreement to sell dated 26/12/2007. It is further seen that in paragraph no.4 of the plaint the plaintiff has specifically averred that when he demanded specific performance of the contract to the defendant, the defendant vide reply notice dated 08/02/2014 denied in toto the transaction that has taken place and have also denied specific performance. Thus, as per the pleadings of the plaintiff his cause of action began after refusal of defendant to execute sale deed. In such a situation, the period of limitation would not be governed under Article 54 of the Indian Limitation Act, 1963. Even otherwise, it is settled principle of law that question of limitation is a mixed question of fact and law which has to be established by adducing necessary evidence by the parties. It is a settled principle of law that plaint cannot be rejected if limitation is a mixed question of law and fact. The Hon'ble Supreme Court in the case of *Salim D Agbotwala Vs. Shamalji Oddhavji Thakkar in Slp (C) 26441/2014 decided on 17/09/2021* has held that when the limitation is mixed question of fact and law powers under Order VII Rule 11 cannot be exercised. The Hon'ble Court further referred to its previous judgment in case of *P. V. Guru Raj Reddy Vs. P. Neeradha Reddy in Civil Appeal No.5254 of 2006 decided on 13/12/2015*, wherein it was observed that rejection of the plaint under Order VII Rule 11 is a drastic power conferred upon

a court to terminate a civil action at a threshold. Therefore, the conditions precedent to the exercise of power are stringent and it is especially so when rejection of plaint is sought on the ground of limitation.

13. Thus, looking into the facts of the case, there appears to be question of limitation which is a mixed question of fact and law. The same can only be decided after adducing evidence by the rival parties. At this juncture, it cannot be said that the suit appears to be barred by Law of Limitation. Even otherwise, as discussed above and as per mandate of Order VII Rule 11(d) of the Civil Procedure Code, at the time of deciding an application under Order VII Rule 11 of the Civil Procedure Code, the Court only has to look into the averments made by the plaintiff. Prima facie, the averments made by the plaintiff do not disclose that the suit is expressly barred by any law. Thus, the instant application cannot be termed to be tenable in the eyes of law. Needless to mention here that the objection raised by the defendants can be dealt after commencement of trial. Accordingly, the application being devoid of merits deserves to be rejected. Hence, I proceed to pass following order :-

ORDER

1. The application stands rejected.
2. No order as to costs.

Date- 30/10/2023
Ichalkaranji

(S. A. Ingley)
2nd Jt. Civil Judge Junior Division,
Ichalkaranji

-- C E R T I F I C A T E --

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

Name of stenographer	R. D. Jadhav
Name of Court	Shri. S. A. Ingley 2 nd Jt. Civil Judge Jr. Div., Ichalkaranji.
Date of Dictation	30/10/2023
Order signed by P.O. on	30/10/2023
Order uploaded on	31/10/2023