

MHKO100006502022**ORDER BELOW EXH. 41**

1. Present application is filed by the defendant for rejection of plaint under Order 7 Rule 11(a)(d) of the Civil Procedure Code. Plaintiff has filed his say at 44.
2. Read application, perused record, heard both the Ld. Advocate at length. To decide this application following points arise for my determination to which I have recorded my findings alongwith reasons as follows :

Sr.no.	Points	findings.
1	Whether plaint is liable to reject?	No.
2.	What order ?	Application is rejected.

REASONS**AS TO POINT No.1 :**

3. The Ld. Advocate for the defendants have submitted that, plaintiffs have filed present suit for declaration of ownership by adverse possession and permanent injunction. Plaintiffs pleaded that they are in possession of the suit property since last many years by partition. They also claiming relief of declaration that they are owner of suit property by adverse possession. The necessary ingredients to claim ownership by

adverse possession is not pleaded by plaintiffs and such fact is not in existence. No cause of action arise to file said suit. Plaintiffs' suit in the same nature is not tenable. Plaintiffs' suit is also barred by law of limitation. So prayed for rejection of plaint.

4. On the other hand, plaintiffs submitted in their say that all the contentions of the application are false. Temporary injunction application of the plaintiffs is allowed. Defendant filed appeal against said order, which is rejected. Order of appellate Court is also challenged before Hon'ble Bombay High Court by writ petition, which is also dismissed. Issues are framed and plaintiff filed evidence affidavit. So this application is not tenable and liable to be rejected.

5. Heard Learned advocate for both the parties at length. They argued as per their above contentions of application and say. In support of his argument Learned advocate for the defendant relied on following citations-

1. *M.Radheshyamla Vs. V Sandhya and another, 2004 DGLS (SC) 275*
2. *Sampat Shankar Patare Vs. Sachin Genuji More, 2023 DGLS (Bom.) 4478*
3. *Hemaji Waghaji Jat Vs. Bhikhabhai Khengarbhai Harijan and others, 2008 DGLS (S.C.) 1257*

Above citations 1 to 3 are regarding necessary pleadings for claim of adverse possession, but plaintiffs' suit is for adverse possession and permanent injunction. So by only

taking into consideration necessary pleadings for adverse possession, it cannot be said that plaintiffs' suit is not tenable. So as facts are different with due respect I mention that these citations are not applicable here.

6. *Rajendra Bajoria and others Vs. Hemant Kumar Jalan and other, 2021 DGLS (SC.) 480*, it is held by hon'ble Apex Court that if clever drafting has created the illusion of cause of action and a meaningful reading thereof would show that the pleadings are manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, then court should exercise its power under Order 7 Rule 11 of C.P.C.

7. Prima facie possession of plaintiffs over suit property is there and plaintiffs came with a case of obstruction to his possession. So it cannot be said that plaintiffs have no cause of action for suit. So with due respect I mention that this citation is not applicable here.

8. *Saleem Bhai Vs. State of Maharashtra, 2002 DGLS (S.C.) 1102* it is held by Hon'ble Apex Court that while deciding application for rejection of plaint allegations in plaint are relevant and not allegations in the written statement. Accordingly, I refer here only plaint to decide this application.

9. In support of his argument Learned advocate for the plaintiffs relied on following citations-

1. *Kashinath Laxman Waghmare since decease through his heirs 2003(3) Mh.L.J. 229*. This citation is regarding Section

27 and 70B of Bombay Tenancy and Agricultural Lands Act. So with due respect I mention that this citation is not applicable here.

2. Karthiyayani Amma Vs. Covindan, AIR 1980 Kerala 224, it is held that person in possession without title, can maintain a suit for injunction against true owner, restraining him from disturbing his possession. So in view of said ratio suit of the plaintiff is maintainable.

10. Perused the plaint and documents filed on record. It is pleading of plaintiffs that they are in possession of suit property from last number of years. Defendants have no concern with suit property. Plaintiff no. 1 and 2 have their houses in suit property. Those house properties bearing Grampanchayat Milkat No. 362 and 513/2. Plaintiffs filed Assessment extract of those properties on record.

11. As per pleadings of the plaintiffs name of Balappa Chanappa Kalbashi is on 7 /12 extract of gat no. 507. Plaintiffs also filed Slip of Sugar factory showing that sugarcane of suit property sent to sugar factory in the name of predecessor of plaintiff no.2.

12. These documents prima facie shows that plaintiffs are in possession of suit property. Along with plea of adverse possession plaintiffs also prayed for permanent injunction against defendants. By order on application of temporary injunction defendants are restrained from obstructing possession

of plaintiffs over suit property. So plea of plaintiffs for adverse possession of suit property will be considered and finally decided only after recording evidence of both the parties.

13. Plaintiffs' suit is not only for declaration of adverse possession but also for permanent injunction. Defendant also not stated that how the plaintiffs' suit is barred by law of limitation. So it cannot be said that plaint is liable to be rejected for no cause of action and barred by law. Accordingly, I answered point No.1 in negative and in answer to point No.2 I pass following order.

ORDER

1. Application is rejected.
2. No order as to cost.

Date: 15.03.2025.

D.M.Pawar
2nd Jt. Civil Judge Jr. Dn.,
Gadhinglaj