

MH LA050002012024



Spl.C.S. No.05/2024  
Vimalbai Vs. Subhadrabai

**:: ORDER BELOW EXH.22 ::**

1. The application is submitted by defendant No.2 as per order VII Rule 11 of the Code of Civil Procedure, 1908.
2. According to him, the suit is filed for declaration of right of pre-emption and to set aside the sale deed dated 21/02/2024. The written statement is not filed yet.
3. The plaintiff has not demanded the property to the defendant. Fake cause of action is shown. The suit property belongs to the common share of the plaintiff and defendant family members. Plaintiff is a mixed question of facts, which does not disclosed cause of action. Plaintiffs are not co-sharer of the suit property. The imaginary cause of dates are mentioned. Necessary parties are not impleaded. So, the plaint may be rejected.
4. Say is filed by the plaintiffs at Exh.48. According to plaintiffs, the defendants have not mentioned as to how the suit is barred by law. The plaintiffs have fully completed the pre-requisites of Order VII Rule 1 of the Code of Civil Procedure, 1908. Plaintiffs can prove their rights. There is a common well between the parties. So, the application may be rejected.
5. Heard Adv. Bone for defendant No.2 and Adv. B.S. Patil for the plaintiffs. The prime contention of the Ld. Advocate for defendant No.2

is that, the plaintiffs have no locus to file the suit, due to absence of demand. The plaint is mixed question of facts. So, he submitted that the plaint may be rejected. Per contra, advocate for the plaintiffs Shri. Patil submitted the claim of the plaintiffs is well founded and cannot be rejected.

6. As held in **Dahiben Vs. Arvinbhai Bhanushali Civil Appeal No.9519/ 2019** of the Hon'ble Supreme Court of India, the land in that suit was under restricted tenure as per section 73-AA of the Land Revenue Code. The plaintiff filed an application before the Collector, Surat to obtain permission for selling of the suit property to respondent No.1, which was non irrigated land and stated that, they had no objection to sell the suit property. The Collector permitted to sell the suit property and fixed sale price. The plaintiff sold the suit property to respondent No.1. The respondent paid the amount through cheques. Respondent No.1 subsequently sold the suit property to respondent Nos.2 and 3. A suit was filed against the original purchaser (respondent No.1) and subsequent purchaser were also included in the suit.

7. Respondent Nos.2 and 3 filed application under Order VII Rule 11 (a) and (d) of the C.P.C. It is the contention of the respondents that, if the sale deed dated 02/07/2009 was being challenged, then the suit ought to have been filed within three years from 02/07/2012.

8. Article 58 and 59 of the Limitation Act, 1963 was considered by the trial court and the application was allowed under Order VII Rule 11 of the C.P.C. The Hon'ble High Court has firmed the findings of the trial

court. The Hon'ble Supreme Court upheld that the suit is barred by limitation as there was delay of 5 and half years.

9. In the matter on hand, the plaintiffs have claimed their right of pre-emption and cancellation the deed in favour of defendant No.2. The plaintiffs claimed to be in possession of the suit property and have claimed preferential right to purchase the suit property being the class I heir of the Chaining Thakur (common ancestor). The plaintiffs have mentioned the cause of action to be 21/02/2024 and 29/02/2024 i.e. the date of sale deed.

10. The defendant has not filed written statement but has filed the present application. The defendant has not mentioned how the suit is hit by principle of limitation at. The defendant has not mentioned that the plaintiffs are not the lineal descendants of Chaining Thakur. Further, the plaintiffs have filed on record evidence which prima facie vitiates the stand of the defendants in the present application. Evidence is required in the matter. Unless the parties contest the matter, the facts cannot be unveiled.

11. The question of limitation is a mixed question of law and facts. It cannot be decided at this level. Therefore, though the citation (supra) is helpful in a suitable case, it will not help the defendants for this application. Therefore, the application is rejected.

Sd/-

{ S.N.Sarde }

Civil Judge Senior Division,

A h m e d p u r

Date : 30/06/2025.