

CNRNO-MHLA150002102024



ORDER BELOW EXH. 19.

(Passed on 04/04/2024)

The present application is moved by the defendants under Order VII Rule 11 (a) & (d) of C.PC for rejection of plaint. Plaintiff filed reply on said application below exh.21 and opposed it.

2. Points for determination along-with my findings and reasoning thereon as under.

	<u>Point</u>	<u>Finding</u>
1.	Whether plaint is liable to be rejected in view of O.7 rule 11 (a) and (d) of C.P.C. ?In the negative.
2.	What order ?	Application is rejected.

Reasons

POINTS NO.1 & 2 :

3. Ld. Advocate for defendants submitted that plaintiff

has alleged that her husband had purchased suit property through Registered sale deed no. 33/1987 on 04.05.1987. Till today mutation on the basis of sale deed no. 33/1987 had not been effected in the name of deceased husband of plaintiff. Through mutation entry no. 5298/2019 the name of defendants have been recorded in the name of defendants. Suit is barred by limitation and suit is without consequential relief. Rights of the plaintiff and defendants are not going to be resolved. Suit is barred by law, so it be liable to be rejected under order 7 rule 11 of C.P.C. with compensatory costs. Ld. Advocate for defendants relied upon decision of **Ebrahimhai V/s State of Maharashtra 1975 Bom 13 and Smt Sabina V/s Mohd Abdul AIR 1997 MP 25**. However, it is necessary to mention here that fact of cited case and fact of matter in hand is different. With due respect, said cited case law is not applicable to the present matter.

4. Per contra, it is submitted by learned advocate for plaintiff that, application is baseless, devoid of merits and filed only to delay the hearing on T.I. application hence, needs

to be rejected. Tahsildar Chakur sanctioned M.E. No. 6566 on the basis of sale deed D.B. No. 33/1987. Defendants on the basis and illegal M.E. No. 5298 of 2019 claiming their right over the suit land. As per settled law mutation entry cannot be base of title. Father of defendant no.1 and 2 Subhash Kulkarni ceases to be owner of suit land from the date of sale deed D.B. No. 33/1987 Dt. 04.05.1987. Hence, so called partition by and between deceased Subhash and present defendant no.1 and 2 is void by it's conception because of non availability of the ownership with Subhash. Deceased Subhash though aware of the sale deed in favour of deceased Pradip Chakurkar, then also illegally effected partition of the land. As per settled law question of limitation is mixed question of fact and law. The suit for injunction was filed on cause of action accrued due to overt act by defendants Dt. 13.02.2024. Considering the date of cause of action suit of the plaintiff is well within limitation. Other all contentions made by defendants is denied by plaintiff in toto.

5. Heard both the sides and perused record of case. It is

settle law that while considering the matter under Order VII Rule 11 of Code of Civil Procedure the court can look into only plaint allegations and the documents submitted by the plaintiff herself and the court cannot look into the defence of the defendants. Plea of defence of defendants is immaterial while deciding application under aforesaid provision. Furthermore court cannot consider the document which are filed by the defendants.

6. Perused averments of plaint. It appears from plaint that plaintiff has filed suit for declaration that partition deed dt. 13.12.2019 is not binding upon her, to retained defendant from alienation of suit property and perpetual injunction against defendant no.1 to 3 in respect of suit land field gat no. 521 Hissa No. ½ adm. 2 H. 2 R situated at village Chakur Tq. Chakur Dist. Latur as described in para no.3 of the plaint. According to plaintiff she is wife of deceased Pradip Chakurkar who purchased suit property from father of defendant no. 1 and 2 by registered sale deed bearing day book no. 33/1987 for valuable consideration amount. Pradip

Chakurkar died on 16.10.2020 in a Covid-19. So, plaintiff filed application for mutation in her name in a suit property in the year 2022. Defendant no. 1 and 2 mutated their name in a suit property by mutation no. 5298 dt.26.12.2019. Plaintiff know said fact in the year 2022 and she filed appeal against said mutation in S.D.O. office, Latur. Defendants encroached on the right of plaintiff by said mutation and partition deed dt. 13.12.2019. On 13.02.2024 defendant no. 1 accepted money from other person for transfer suit property by sale deed. So, plaintiff has filed suit for declaration to that effect that partition deed dt. 13.12.2019 is not binding upon her and she also prayed for perpetual injunction and prayed to restrained defendant from transfer suit property. After considering entire plaint, it appears that plaintiff has cause of action to file suit against defendants. Plaintiffs came to know about mutation entry no. 5298 in year 2022 and she also came to know about earnest amount of sale deed which is received by defendant no.1 from third person on 13.02.2024. The plaintiff has filed suit within three years from the date of

knowledge about mutation and earnest amount. Defendants have not shown any provision of law which shows that suit is barred by law of limitation. Furthermore limitation is mixed question of fact and law. It is not pure question of law. It is necessary to record evidence before decide question of limitation. Evidence can not be recorded while deciding application U/o 7 R 11. Plea of defendants in respect of limitation can not be considered at this stage of matter. So, application of defendants to reject plaint is not tenable in view of provision under O. 7 R. 11 of Code of Civil Procedure. Hence, I answer point no.1 in negative and in answer to point no.2. I proceed to pass following order.

ORDER

Application (Exh.19) is rejected.

Date : 04/04/2024

(Prashant P. Kale)
Civil Judge J.D. Chakur