



CNR No.MHNG100003582015
R.C.S. No.31/2015
(Old R.C.S. No.1149/2008)
Sushila+2 Vs. Soma+1

ORDER BELOW EXH. 88

(Order passed as on 23rd March, 2021)

[01] This is an application under Order VII Rule 11 of Code of Civil Procedure, 1908 for rejection of the plaint on the ground of tenability of the suit, alleging as without any cause of action and barred by the law of limitation.

[02] Perused the application and say given by plaintiffs. The suit is for declaration, possession and for permanent injunction. By way of this application it has been contended by defendant no.1 that the suit claim instituted by plaintiffs does not disclose any cause of action. It has been contended that plaintiffs have no cause of action institute the suit against defendant no.1. Further, it has been contended that itself from the pleading put fourth in plaint Exh.1 it can be concluded that the suit claim instituted by plaintiffs is barred by the law of limitation. Thus, defendant no.1 prayed for rejection of the plaint as per Order VII Rule 11 of C.P.C.

[03] On the other hand the plaintiffs vide their say Exh.92 have strongly opposed the application. It has been contended that itself from the recitals of plaint Exh.1 it can be gathered that there is the cause of action with plaintiffs for instituting this suit against defendants. It has been contended that the plaintiffs have instituted this suit on the basis of their ownership over the suit property. It has been contended that by virtue of Article 65 of the Limitation Act the suit claim instituted by plaintiffs is well within the law of limitation. Thus, plaintiffs prayed for rejection of the

application with costs.

[04] Considering the rival contentions raised by both sides following points are arise for my determination to which I have recorded my findings for the reasons to follow.

Sr. No.	Points		Findings
1	Whether the plaint does not disclose cause of action ?	:	...In the negative
2	Whether the suit appears from the statement in the plaint to be barred by the law of limitation ?	:	...In the negative
3	What Order ?	:	Application is rejected.

REASONS

[05] Heard Ld. Counsels for both sides. I have perused plaint as well as the documents annexed with the same. While deciding an application under Order VII Rule 11 of the C.P.C. the only averments in the plaint have to be read as a whole. While deciding the application under Order VII Rule 11 court cannot travel beyond statements in the plaint, court has to decide questions pertaining to rejection of plaint only within corners of the plaint. Court cannot step out a plaint and certainly cannot enter into the merits of case and same is not permissible under law.

[06] The Ld. Counsel for defendant no.1 in support of his contention for rejection of plaint has relied upon the case of

[a] *Kuldeepsingh Pathania Vs. Vikramsingh Jariyal, reported in 2017(6), Mh.L.J., page 33 ;*

- [b] *Gaurav S/o. Malmukund and others Vs. Tukaram Pandurang Dhagekar Thr. LR's Smt. Vimalbai and others, reported in 2018(4), Mh.L.J., page 709 ;*
- [c] *Thakurji Deosthan Sihora Vs. Viran Wd/o. Babu Dahat and others, reported in 2015(3), Civil Law Journal, page 82 ;*
- [d] *Chandrama Singh (Deceased) and another Vs. Phaguram Varma and others, reported in 2018(1), Civil Law Journal, page 172.*

[07] On the other hand Ld. Counsel for plaintiffs in support of their defense are relied upon the case of *WILSON PEREIRA CARVALHO AND ANOTHER Vs. NICOLAU FERNANDES AND ANOTHER, reported in 2019(2), Mh.L.J., page 438.*

[08] I have thoroughly gone through the judgments relied on by both applicant and non-applicant. In authority no.1 of Hon'ble Apex Court relied on by applicant the scope of inquiry under Order VII Rule 11 and that of the trial about preliminary issue under Order XIV Rule 2(2) has been given. It has been observed that under Order VII Rule 11 court has to take decision looking at pleadings of plaintiffs only and not on rebuttal made by defendant or any other materials produced by defendant. In authority no.2 of Hon'ble Bombay High Court, it has been observed that when once on plain reading of plaint it is held that the suit is barred by limitation, court is bound to exercise powers under Order VII Rule 11(d) of C.P.C. to reject the plaint. The authority no.3 of Hon'ble Bombay High Court and authority no.4 of Hon'ble Alahabad High Court is on the point of section 3 of the Limitation Act, 1963. Thereafter, if we go through the guidelines given in cited authority of Hon'ble Bombay High Court, relied on by the counsel for plaintiffs, it has been observed that the limitation being a mixed questions of law and fact, plaint could never be

rejected as being barred by limitation.

[09] Considering the valuable guidelines given in cited authorities relied on by both applicant and non-applicants, if we go through the recitals of plaint Exh.1 plaintiffs during their plaint have categorically pleaded about issuance of legal notice to defendant no.1 and 2. As per contentions put fourth by plaintiffs the cause of action has been accrued as the defendants failed to comply the same. While gathering the recitals regarding cause of action court has to go through the overall averments put fourth by plaintiffs. Thus, considering the averments of plaint it can be gathered that there is cause of action for institution of the suit against defendants. Moreover, the objection raised by defendant no.1 is mixed question of law and facts. Thus it cannot be said that the plaint does not disclose the cause of action.

[10] So far as tenability of the suit on the ground of barred by the law of limitation is concern, even though it has been contended by defendant no.1 that the suit claim instituted by plaintiffs is barred by the law of limitation. However, the point of limitation involved mixed question of law and facts. At this initial stage without giving any opportunity of leading evidence it cannot be concluded that the suit claim is barred by the law of limitation. Moreover, it is the contention of plaintiffs that they are the owner of suit field. The defendant no.1 has retained the possession of suit field. The plaintiffs have every right to recover the possession from defendant no.1. Thus, according to plaintiffs being title holder there is no limitation for them for bringing the suit against defendant no.1.

[11] Moreover, in view of valuable guidelines given in cited authorities relied on by applicant and non-applicants without giving detailed opportunity to lead evidence it cannot be concluded that the suit claim has been instituted

without any cause of action and same is barred by the law of limitation. Accordingly considering the discussion given supra, I find no substance in the objections raised by the defendant no.1 regarding tenability of this suit. Hence, I answer point no.1 and 2 in negative and in answer to point no.3 pass the following order.

ORDER.

- [01] The application regarding tenability of the suit (Exh.88) is hereby rejected.
- [02] Costs in cause.
- [03] Dictated and pronounced in open court.

Date : 23.03.2021

[S.K. Fokmare]
Civil Judge Senior Division
Umrer.

Certificate

"I affirm that the contents of this P.D.F. file order are word to word same as per original order".

Name of Stenographer : **Mr. Mahendranath D. Nagpure.**
Stenographer (Grade III)

Court Name : Civil Judge Senior Division, Umrer

Order signed on : 23/03/2021

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CIVIL CASES/ORDER VII RULE XI/