

Regular Civil Suit No.4/2019
Natthu Vs. Atul

ORDER BELOW EXHIBIT – 28
(Passed on this 15th day of February,2022)

1. Present application is preferred by the defendant under Order 7 Rule 11 (a) of Civil Procedure Code. The plaintiff has filed reply at Exh.29 and strongly resisted the application. Heard learned advocate Shri. P.S. Sayare for the defendant and learned advocate Shri M.D. Paliwal for the plaintiff.

2. Learned advocate Shri. P.S. Sayare for the defendant argued that plaintiff is claiming declaration of ownership on the basis of sale deed executed in the year 1981. The plaintiff has knowledge about the execution of sale deed on 22/04/1981 therefore the plaintiff ought to be claimed his declaration of ownership within three years from 22/04/1981. Further he argued that the plaintiff has made clever pleading and which illused cause of action to save period of limitation. Further he placed his reliance upon Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by Lrs. unreported judgment in Civil Appeal No.2960/2019 decided on 13/03/2019. Further he invited my attention towards pleading of the plaintiff and argued that the cause of action shown by the plaintiff itself illusion.

3. On the other hand the learned advocate Shri. M.D. Paliwal argued that the plaintiff has not claimed any relief in respect of sale deed it is executed in the year 1981. The plaintiff suit is fall under Article – 113 of Limitation Act read with Section 34 of Specific Relief Act. Moreover, Article – 113 spell out the period of limitation begin when right to sue accrues. Further he argued that cause of action does not mean that every and each things or circumstances leads to file a suit or right to sue. In the present case facts are different, therefore right to sue was not accrues in the year 1981. Lastly he argued that case relied by the defendant is not applicable to the present case in hands.

4. In Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by Lrs. (Cited Supra) the Hon'ble Supreme Court observed that the Court

has to see and find out illusion of cause of action which is result of clever drafting. If the Court find any such factor then power under Order 7 Rule 11 must exercise and suit must be rejected forthwith.

5. In order to decide this controversy it is necessary to see the pleading of both sides. Now I gone through the plaint it shows that the plaintiff was government servant and he had purchased the suit property in the name of his mother as Benami Transaction. Further it is also pleaded that the plaintiff was cultivating the suit property with the help of his brother during year 2017. However dispute was arose after year 2017 for the reason of execution of will by Rukmabai in favour of defendant no.1. On careful reading of the pleading it appears that the plaintiff has grievance about registered will executed in the year 2009 in favour of defendant no.1. Now the plaintiff has brought theory that he has right in the suit property by virtue of Benami Transaction executed on behalf of his mother.

6. Now, I perused the prayer clause and reproduced for consideration.

Prayer Clause:-

1] It is therefore prayed that this Hon'ble Court be pleased to pass a decree of declaration, declaring that the plaintiff is the owner of the suit property and having right, title and interest over the entire suit property.

2] The Hon'ble Court be further pleased to pass the decree of cancellation of the alleged will bearing registration no.878/2009 dated 26/02/2009 with respect to the suit property.

3] The Hon'ble Court be further pleased to direct the defendant no.2 to handover the peaceful and vacate possession of the suit property to the plaintiff.

4] Cost of the suit be saddled upon the defendants.

5] Any other relief which this Hon'ble Court deems reasonable and proper be granted to the plaintiff in the interest of justice.

7. On careful reading of the prayer clause it appears that the plaintiff has sought relief in respect of will deed which is registered on 26/02/2009. Even the plaintiff has sought relief of declaration about the right and interest involved in the suit property. On careful reading of whole plaint and prayer clause I do not find any illusion of cause of action. On the contrary the defendant is trying to bring case from execute of sale deed dated 22/04/1981. Here pertinent to note that the plaintiff did not have made any claim in respect of the sale deed executed on behalf of his mother.

8. Further significant to note that the period of limitation will begin from only when right to sue accrues. Upon consideration of the pleading it appears that the plaintiff got knowledge about execution of will in favour of defendant no.1 by his mother in the year 2017 and thereafter. The possibility of the previous knowledge about the execution of will deed is appears to be quite less. Therefore, I do not find any serious infirmity about the cause of action shown by the plaintiff. Hence application is devoid of merit and deserve to be rejected with costs. I proceed to pass the following order:-

ORDER

1. Application Exh.28 is rejected.

Parseoni.
Date:-15/02/2022

(O.J. Kulkarni)
Civil Judge, Jr.Dn., Parseoni.

CERTIFICATE

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

Name of Stenographer-M.Y. Mushtaque