

R.C.S. No. 127/2023
Rafiq Vs. Indumati & Ors.
CNR No. MHNS130008952023

ORDER BELOW EXH. 15

The present application has been filed by defendant no.1 & 2 for rejection of plaint under Order VII Rule 11(b) & (d) of Code of Civil Procedure. Perused the application filed along with an affidavit. Perused the say filed by plaintiff vide Exh.17. Heard both.

2. This is a suit for declaration and injunction through which the plaintiffs sought declaration of cancellation of sale deed bearing no. 1714/1999 dated 01.06.1999. It is pending for plaintiff's evidence. It is proceeded without written statement of the defendants. Defendant no. 1 & 2 filed the instant application for rejection of the plaint on the ground that the suit is barred by law.

3. The defendants contended that the plaintiffs ought to have filed the suit for declaration within three years from the date of sale deed. The defendants contended that the suit is not within the limitation. Hence, they prayed that, the plaint may kindly be rejected.

4. The plaintiffs have filed their say vide Exh.17 and contended that the application is false, frivolous and

misconceived in nature. The suit is well within limitation. Therefore, he prayed that the application may kindly be rejected.

5. Perused the record. Heard. Following points arise for my determination to which I have given findings thereon for the reason stated below :

Sr.No.	Points	Findings
1	Whether the plaint is liable to be rejected as prayed ?	No
2	What order ?	Application is rejected.

REASONS

AS TO POINT NO. 1 :-

6. It is contended by defendants that the suit is not within the limitation. It ought to have been filed within three years from the date of sale deed. It is further contended by defendants that Article 59 of the Limitation Act is applicable in the present case.

7. Considered submissions. On perusal of the plaint *prima-facie* it reveals that plaintiffs averred the cause of action in the plaint. The limitation for filing the suit for cancellation of sale deed i.e. instrument starts from the date when the facts

entitling the plaintiff to have the instrument cancelled or set aside first become known to him. In the present case the plaintiff averred that the cause of action arose in April -2023. Accordingly, the plaintiff filed suit on 21.06.2023. Therefore, the plaintiff's contention is that the suit is within limitation.

8. It is the contention of defendant that defendant no.1 sold out his share in the suit property before more than 20 years ago. Plaintiff applied for certified copies of sale-deed on 07/11/2022. However, plaintiff averred the cause of action as April-2023. It is further contended that defendant no.2 developed the said portion of the suit property before few years ago. Therefore, plaintiff has knowledge about the sale-deed of the year 1999 since last more than 20 years ago. Therefore, the suit ought to have filed within 3 years from the date of sale-deed.

9. Needless to mention here that while deciding the application under Order VII Rule 11(a) of Code of Civil Procedure the court has to see only the plaint. Therefore, keeping in view the averments made in the plaint, it cannot be said that the suit is on the face of it barred by the limitation. However, the final decision on the point of limitation would be given after framing issues and recording of evidence. Needless to mention here that the issue of limitation is mixed question of

facts and law. It requires full fledged trial. Hence, considering the relief sought by the plaintiff and the nature of suit, Article 59 of the Limitation Act would not apply in the present case. Furthermore, though it is accepted that the plaintiff has got knowledge about the sale-deed on 07/11/2022, the suit is well within the limitation.

10. In view of the above discussion, I hold that the plaint is not liable to be rejected under Order VII, Rule 11(d) of the C.P.C.. Therefore, the application devoid of any merits. Hence, I answer point No. 1 in negative.

AS TO POINT NO. 2 :

11. On perusal of the plaint it reveals that the plaint is not barred by any law. Therefore, in answer to point No.2 I made following order :-

ORDER

1. The application (Exh.15) is rejected.
2. Cost in main cause.

Date : 04/09/2024

(P.D.Kolekar)
Civil Judge, J.D.,
Pimpalgaon.