

ORDER BELOW EXHIBIT 19

The present application is filed by the defendant no. 2 to 4 for the rejection of the plaint under Order VII Rule 11 (d).

2. The defendants contend that the present suit is filed for partition, possession and for declaration that sale-deed dated 12-06-1985 and 03-01-1986 are void and not binding on the share of the plaintiff. As per article 59 of the Limitation Act, prescribed period of limitation to challenge a sale-deed is three years. Also, as per article 109 of Limitation Act, prescribed period of limitation to set aside father's alienation of ancestral property is twelve years from taking of possession of the property by alienee. Therefore the present suit which is filed in the year 2016 is beyond period of limitation. Hence the defendants prayed that the suit be dismissed on this ground.

3. The plaintiff resisted the present application vide her say at Exh. 22. The plaintiff contends that as per contents of the plaint, suit land is ancestral land of her and defendant no. 1. In May 2016, she demanded the partition of her share in the suit land which the defendants refused. Thereafter she obtained copies of record of the suit land and she became aware about the fact that the suit land has been alienated to defendant no. 2 to 4 vide said sale-deeds dated 12-06-1985 and 03-01-1986. Thus the cause of action arose in May 2016 when she got the knowledge the said sale-deeds. Hence the present suit is filed well within limitation. Further, the issue of limitation is a mixed question of law and fact, hence the same can be decided during trial. Therefore the plaintiff prayed that the present application be rejected with costs.

4. Ld. Adv. for the defendants, shri. K. B. Wagh submitted that as per cause of action Para no. 9 of the plaint, cause of action arose in the year 1985, hence the suit is not within period of limitation. It has not been mentioned in the plaint that the suit is filed within period of limitation from the date of knowledge of the sale-deed to the plaintiff. Therefore the suit is seriously barred by limitation. Hence he prayed that the application be allowed. Per contra ld. Adv. for the plaintiff, shri B.W. Patil submitted that the as per article 59 of Limitation Act, in respect of suit for cancellation of the

sale-deed, period of limitation is three years which starts from the knowledge of the plaintiff about the sale-deed. In the present case, the plaintiff got knowledge of the sale-deed dated 12-06-1985 and 03-01-1986 in the year 2016, hence the present suit is well within limitation. Therefore, the present application is not tenable, hence it be rejected.

5. Perused the application, say and other documents on record. Heard ld. Adv. for the plaintiff and ld. Adv. for the defendants. The present suit is filed for partition, for declaration that sale-deeds dated 12-06-1985 and 03-01-1986 are void and not binding on the share of the plaintiff and for perpetual injunction. It is settled position of law, that there is no prescribed period of limitation for filing a suit for partition. Further, as per article 59 of Limitation Act, in respect of suit to cancel or set aside instrument or decree or for rescission of contract, period of limitation is three years which starts when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him. Thus as per article 59, the period of limitation starts from the date of the knowledge of the instrument and not from the date of its execution.

6. In the present case, in the plaint, it has been mentioned that the suit land is ancestral land of the plaintiff and defendant no.1. In May 2016, the plaintiff demanded partition of her share in the suit land which the defendant no. 1 refused. Thereafter the plaintiff obtained copies of record of the suit land and she became aware that name of defendant no. 2 to 4 appears on the record of the suit land. Thus she got the knowledge that the suit land is alienated to defendant no. 2 to 4 vide the sale-deeds dated 12-06-1985 and 03-01-1986. Hence as per contents of the plaint, the plaintiff got knowledge of the said sale-deeds dated 12-06-1985 and 03-01-1986 in May 2016. Though cause of action paragraph of the plaint does not specifically mentioned the arising of cause of action in the year 2016 , plaint paragraph no. 5 mentions about arising of cause of action in May 2016.

7. It is settled law that the averments of the plaint have to be read as a whole to find out whether the plaint discloses a cause of action. Thus the cause of action has to be gathered from the entire reading of the plaint and not only from a cause of action paragraph. It is also well settled that considering the entire averments

in the plaint, if it leads to an irresistible conclusion that the plaint is barred by law, then only it can be rejected under Order VII Rule 11(d). It is also well settled that objection of limitation is a mixed question of law and facts and it needs to be decided by taking evidence.

8. In the present case, as per the plain reading on the plaint, it appears that the plaintiff got knowledge of the sale-deed dated 12-06-1985 and 03-01-1986 in the year 2016. As per article 59, the period of limitation starts from the date of the knowledge of the instrument. Now whether this contention made by the plaintiff about her knowledge of the sale-deeds in May-2016 has any merit or not may be decided during the trial on touchstone of the evidence laid by both the parties. At this stage, the present application has to be decided only on plain reading of the plaint and defence taken by the defendant cannot be taken into consideration. Therefore on the relying on the contents of the plaint only, at this stage it cannot be concluded that the suit is not filed within the period of limitation. It is matter of evidence which will be decided during trial. Hence at this stage the plaint is not liable to be rejected on the ground of limitation.

In the light of the above discussion I proceed to pass the following order-

ORDER

1. The application (Exh. 19) is rejected.
2. Costs in cause.

(Dictated and pronounced in open court.)

Sd/-

Date : 13.06.2019
Place : Kalwan

(A. C. Joshi)
Jt. C. J. J. D., Kalwan