

Regular Civil Suit No. 74/2014

Kisan Dagdu Ganjve
V/s.

Ramchandra Bhaurao Warungase

ORDER BELOW EXH. 57

The defendant no.1 has moved this application under Order 7 Rule 11 (d) of the Code of Civil Procedure, 1908.

02. Plaintiff has filed his say at Exh. 60. Perused the application, say and record of the case.

03. Heard both learned Advocates at length.

04. The defendant has alleged that the plaintiff has filed the present suit on false grounds seeking execution of agreement to sell dtd. 21st March 1986, though the claim is clearly barred by limitation. According to the plaint, the plaintiff issued a legal notice on 20.09.2007, but the suit came to be filed only on 07.05.2014, beyond the prescribed period of limitation of three years. The defendant submit that from the averments in the plaint itself, the suit is ex-facie time-barred and therefore not maintainable in law. He further contended that continuation of such a barred suit would amount to abuse of the process of the Court and waste judicial time. Hence, he prayed that the plaint be rejected under Order VII Rule 11 (d) of the Code of Civil Procedure.

05. The plaintiff has contend that, the defendant's application is false and filed only to delay the suit. The defendant knew the alleged limitation issue from the beginning but failed to raise it earlier. The suit has already progressed to the evidence stage, and the defendant has repeatedly delayed cross-examination since 2018. The plaintiff submits that no ground under Order VII Rule 11 CPC is made out from the plaint itself. Therefore, the application deserves rejection, and the issue, if any, can be decided at final hearing.

06. On perusal of the plaint, it appears that the plaintiff has prayed for declaration that he has perfected his title the suit property by adverse possession, for execution of the sale-deed of the suit property and for perpetual injunction. The plaintiff issued notice to defendant nos. 1 and 2 on 20/09/2007 calling upon them to execute the sale deed. Prior to the institution of the present suit, on 29/01/2014, the defendants alleged obstructed the plaintiff's possession. Hence, the plaintiff instituted the present suit seeking declaration of title by adverse possession and specific performance of agreement to sell dtd. 21/03/1986.

07. From the pleadings, it is clear that the suit has not being instituted solely for specific performance of agreement to sell, but also for declaration of title by adverse possession. The limitation for filing the suit for declaration of title commenced on 29/01/2014. Therefore, the present suit is

filed within the prescribed period of three years for seeking such declaration. Whether the relief of specific performance of agreement to sell is within limitation or not is a mixed question of law and fact, which can be decided only after evidence is led by the parties. Therefore, at this stage, I find that the plaint is not liable to be rejected on the ground that the suit is barred by law of limitation. Consequently, the application is liable to be rejected. Therefore, I pass following order:-

ORDER:-

- 1) Application is rejected.
- 2) Cost on the applicant.

Date : 24.04.2026

(M. D. Nanaware)
Jt. Civil Judge Senior Division,
Igatpuri.