

ORDER BELOW APPLICATION (EXH.13) IN RCS
132/2023

1. This is an application with prayer for invoking Order VII Rule 11 of the Code of Civil Procedure, 1908 by defendant Nos. 1 and 2.

2. Defendants have prayed for rejection of plaint stating that, the present suit is filed by the plaintiff for permanent injunction and other prayers. Further, he stated that, the cause of action has not happened in the jurisdiction of this court i. e. the suit is bound to be rejected as per Order VII Rule 11 (a) of the Code of Civil Procedure and for the reason that the cause of action happened in the year 2014, however the suit came to be filed in the year 2022. So, the suit is not in the limitation. Therefore, barred as per Order VII Rule 11 (d) of the Code of Civil Procedure.

3. The plaintiff filed Say (Exh. 50) and resisted the application stating that, the cause of action has happened in the jurisdiction of this court itself. The present application is filed by defendants just to prolong the case. Hence, he prayed for rejection of this application.

4. Heard learned counsel for the parties.

5. At the onset, it is necessary to define the scope of enquiry under this application. For this purpose, the relevant provision of law is reproduced as follows :-

**Order VII Rule 11 of the Code of Civil
Procedure, 1908**

11. Rejection of plaint. - The plaint shall be rejected in the following cases :-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law :

[(e) where it is not filed in duplicate;]

[(f) where the plaintiff fails to comply with the provisions of Rule 9:]

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

6. The scope of enquiry is defined under Order VII Rule 11 of the Code of Civil Procedure, 1908 which provides for rejection of plaint on above mentioned grounds. As mentioned above the suit is filed for declaration, perpetual injunction and for removal of encroachment by way of mandatory injunction and for the possession. Defendants have raised the objection stating that plaintiffs have not mentioned exact encroached portion and also not filed map to that regard. However, plaintiffs have made subsequent amendment to that effect. So now this objection does not survive. Moreover if at all the Court comes to the conclusion that plaintiffs have not paid adequate court fees stamp, it can be recovered at any stage of the suit.

7. The scope of enquiry is defined under Order VII Rule 11 of the Code of Civil Procedure, 1908 which provides for rejection of plaint if it does not disclose cause of action. This is actually a pre-registration objection. The only requirement of law is to read a plaint and decide whether it discloses a cause of action. Cause of action is a bundle of facts. It can be gathered from reading whole of the plaint. Basically, the suit was originally filed in the court of Civil Judge, Senior Division, Nashik. However, now the suit has been transferred to this court. So, question of jurisdiction of this court does not exist. In this case the cause of action is expressly disclosed by the plaintiff in the plaint and specifically pleaded that, defendants started obstructing his possession over the suit property by making encroachment

in the year 2014. However, it continued till 2018 and further till 18/02/2020 i.e. till the filing of complaint application in the police station. in spite of several requests and applications by the plaintiff to defendants. Hence, at last in the year 2021. Therefore, the suit is well within limitation. Hence, the order.

ORDER

- (i) The application is rejected.
- (ii) Costs in consequence of the suit.

Igatpuri.
Date : 02/07/2024

(Yashshree Marulkar)
Civil Judge Senior Division,
Igatpuri.