



Order passed below Exh.20
(Passed on dated:- 07/12/2021)

1) The present application filed by the defendant no.1 to 3 by invoking the provisions of Order VII Rule 11 of the Code of Civil Procedure.

2) It is the contention of the defendants that there is no mention of any officer of the corporation in the title clause. Suit is not filed against the Pimpri Chinchwad Municipal Corporation but it is against "E" Regional Office, Bhosari of the P.C.M.C.. Therefore, the suit is barred for non-joinder of the necessary parties. Further, it is contended that the notice under Section 487(1)(a) of the Maharashtra Municipal Corporation Act was not served upon the corporation. Suit is filed for removing names of the legal representatives or the nominees. But it is not mentioned when the names of the nominees were included. The objection to the nominees is raised by way of this suit approximately after 25 years. There is also a prayer in the suit regarding pension, gratuity, provident fund, leave benefit and other dues. But, no particulars are provided in this regard. Hence, it is prayed that the plaint be rejected on the basis of these grounds.

3) The plaintiff's have filed their say at Exh.22 and strongly resisted the application. It is submitted by the plaintiff that she is



legally wedded wife of the defendant no. 1. Two daughters were born out of this wedlock. But, names of the plaintiff and their daughters were not included in the service book of defendant no. 1 as nominees. Moreover, the defendant no. 1 is mentally ill person and he is suffering from epilepsy. By taking disadvantage of this fact, the defendant no. 2 and 3 got their names entered as the nominee of the defendant no. 1 in his service book. In such situation, this suit is not barred because notice under Section 487(1)(a) of the Maharashtra Municipal Corporation Act was not served upon the corporation.

4) On closed scrutiny of the application and say, it appears that the defendant no. 2 is sister of the defendant no. 1 and the defendant no. 3 is son of the defendant no. 2. It is also alleged that the defendant no. 1 is suffering from epilepsy. Photocopies of some documents are filed on record in this regard. On the basis of the averments in the plaint and the title clause, it appears that "E" Regional Office, Bhosari of the P.C.M.C. is included as the defendant no. 4. Therefore, on this sole ground, it cannot be concluded that the suit is barred by law because of the non-joinder of necessary party or misjoinder of necessary party. All the other contentions raised in the application in respect of nominees in the service book and amounts like pension, gratuity, provident fund, leave benefit and other dues as well as the disease of epilepsy and last but not the least the question of



limitation etc. certainly include mixed question of law and fact. The defendants filed two case laws in support of their contention. Both are honored. First case law of the Hon'ble Bombay High Court **Vinay Ganesh Prabhu Dessai Vs. Government of Goa and others [2021 (2) Mh.L.J.]** is regarding limitation. As mentioned earlier, in this particular case, limitation is mixed question of law and fact. Second case law of the Hon'ble Bombay High Court **Chandan Singh s/o Sandhu Singh Chandel Vs. Kokilabai Balkrishna Salame and others [2021 (3) Mh.L.J.]** is in respect of cause of action. By reading the plaint, prima facie it can not be concluded that there is no cause of action. Therefore, it can not be decided at this stage by disposing of the present application. So, on the basis of this discussion, I proceed to pass the following order:

ORDER

1. Application is rejected.
2. Cost in cause.

Dated:07/12/2021.

(S. P. Kulkarni)
Civil Judge Junior Division
P.C.M.C. Court, Akurdi, Pune.

ORDER BELOW Exh.20
CNR No. MHPU10-000018-2021

4/3 R.C.S. No. 04/2021
Pratibha Chandrakant Barathe
-Vs-
Chandrakant Ganpat Barathe and others



CERTIFICATE

“I affirm that the contents of this P.D.F. file Order are same word for word as per original Order”.

Name of Stenographer	:-	Smt. S. S. Gupte
Court Name	:-	Smt. S. P. Kulkarni (J.M.F.C.) Civil and Criminal Court (P.C.M.C.), Akurdi, Pune.
Date	:-	07/12/2021
Order signed by presiding officer on	:-	07/12/2021
Order uploaded on	:-	08/12/2021