



ORDER BELOW EXH.95 IN R.C.S.No. 68/2022

This is an application filed by Defendant No. 11 against Defendant No. 1 to 4 under Order 7 rule 11 (D) of Civil Procedure Code.

2. The original suit was filed by plaintiff against Defendant No. 1 to 11 seeking partition and declaration. During pendency of suit. There was a compromise or amicable settlement arrived between plaintiff and Defendant No. 11.

3. Defendant No. 1 to 4 during pendency of suit filed counter claim, seeking prayer partition and declaration through Exh. 82. In which the reliefs are also claimed against Defendant No. 11. To that counter claim Defendant No. 11 has filed his written statement at Exh 82.

4. After the said filing of counter claim written statement, this present application is moved by the Defendant No. 11 under Order 7 rule 11 of Civil Procedure Code . To The said application Defendant No. 1 to 4 have filed their say at Exh. 97.

5. The bone of contention in this application is that the Defendant No.11 had purchased part of property in survey number 15/2/B of village Rajgarh Tal. Bhor, by virtue of registered sale deed on 28th of April 2006. The said sale deed is now being challenged by these Defendant No.1 to 4 in their counter claim. There is nearly 12 years

Neha

delay in challenging the conveyance which is barred by law of limitation. The plaint contentions are regarding cancellation of sale deed while the prayer speaks about declaration with regard to sale deed. The contentions and prayers are contradictory. Due to Barred by law, the relief claimed against & Defendant No. 11 under counter claim does not survive. The counter claim is hit by Order 7 Rule 11 (D) of Civil Procedure Code, same be rejected.

6. The Defendant No. 1 to 4 has opposed this application. Their argument is that the counter claim is filed against the plaintiff as well as Defendant No. 11 seeking the prayer of partition and declaration. Unless and until trial takes place the entire suit prayers cannot be decided. Counter claim cannot be rejected in parts. As for the question of law of limitation with regard to sale deed of year 2006, being bogus, fraudulent, and not binding. The period of limitation to challenge is though of 3 years. It is from the date of knowledge. To prove when a party had knowledge is mixed question of fact and law. The burden is on the plaintiff of counterclaim to prove the same by giving evidence in the trial. Hence, at this stage, entire counterclaim cannot be rejected. Application deserves no consideration. Same be rejected.

7. Heard both sides. Perused citations pressed on record by Defendant No.11. While deciding any application under Order 7 Rule 11, only the plaint has to be considered, the defence raised or the other documents cannot be looked into is the basic principle. Hence, it is important to see the counterclaim filed by Defendant No. 1 to 4. The counterclaim is at Exh.75, in the said claim the party has sort declaration against the interest of Defendant No. 11. According to them, the Defendant No. 11 by playing fraud got executed the controversial sale deed in his favour. These defendants came to know about the same



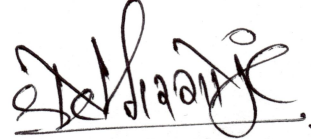
in the month of November 2021, based on allegations raised by plaintiff of original suit. Hence they also issued notice to the Defendant No.11.

8. As rightly pointed out by Defendant No. 1 to 4 as the allegation is with regard to fraud being played and as to the knowledge of fact, the evidence needs to be brought on record. Merely based on the provisions of law of limitation. The entire counterclaim cannot be rejected. The Defendant No. 1 to 4 has also sort prayer of mesne profits from plaintiff of original suit for that also evidence is required. Hence, limitation being mixed question of fact and law, at this point with the clever drafting of defendant's counterclaim, is suit smartly brought within limitation, cannot be assumed. The Defendant No. 11 has already filed his written statement to the counterclaim of Defendant No. 1 to 4. The defence is already raised, prior to filing of this application. Hence with this reasoning, I pass following order.

ORDER

1. Application is rejected
2. Cost in cause.

Bhor
Date. 30.01.2025.


(N.K.Nagargoje)
Civil Judge J.D., Bhor

CERTIFICATE

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

Name of the Steno	-	Shri. A.D.More
Court Name	-	Hon'ble Smt. N.K.Nagargoje
Date of Order/Judgment	-	30/01/2025
Date of Sign Order/Judgment-	-	30/01/2025
Order uploaded on	-	30/01/2025