



ORDER BELOW EXH.45

1. This is an application for rejection of the plaint Under Order 7 Rule 11 of the Code of Civil Procedure. Read the application and reply of plaintiffs at Exh. 59. Heard Ld. Advocates for the rival parties.

2. Ld. Advocate for defendant no. 6 to 8 and 11 submitted that, considering the averments in the plaint and bundle of facts stated in the plaint it appears that, by clever drafting the plaintiffs have tried to bring the suit within the period of limitation. Therefore, the plaint is liable to be rejected. In support of this contention he relied upon Raghwendra Sharan Singh Vs Ram Prasanna Singh (2020) 16 Supreme Court Cases 601. He contended that, even if the allegations made in the plaint are taken to be correct as a whole on their face value, it show that the suit is barred by Law of Limitation. In support of this contention he placed reliance upon Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal (2017) 13 Supreme Court Cases 174. Relying upon Rajendra Bajoria and Others Vs. Hemant Kumar Jalan and Others 2021 SCC Online SC 764 as well as P.R. Sukeshwala and another Petitioners Vs. Dr. Devadatta V.S. Kerkar and another Respondents AIR 1995 Bombay 227, he argued that, the plaint does not cause of action and, therefore, the plaintiffs can not be permitted



to unnecessarily protract the proceeding.

3. It is further argued by Ld. Advocate for defendant no. 6 to 8 and 11 that, the defendants have not clearly and unequivocally threatened to infringe the right asserted by plaintiffs in the suit. Therefore, the suit is barred by Limitation. In support of this contention he relied upon Mst. Rukhmabai Appellant Vs. Lala Laxminarayan and Ors. Respondents AIR 1960 Supreme Court 335. He submitted that, present suit is based on multiple causes of action. Therefore, the period of limitation will begin to run from the date when the right to sue first accrues. In support of this contention, he relied upon Khatri Hotels Private Limited and Another Vs. Union of India and Another (2011) 9 Supreme Court Cases 126. He submitted that, the suit is liable to be rejected as it is undervalued. He relied upon the Judgment in Selina Sheehan Vs. Hafez Mohammad Fateh Nashib AIR 1932 Cal 685 in support of this contention. Relying upon Saleem Bhai and Others Vs. State of Maharashtra and Others (2003) 1 Supreme Court Cases 557, he argued that, the powers under order 7 Rule 11 of CPC can be exercised at any stage before the conclusion of the trial.

4. Ld. Advocate for defendant no. 6 to 8 and 11 argued that, present suit is meaningless and bound to prove abortive. Therefore, it should not be permitted to



occupy the time of the court. In support of this contention he placed reliance upon Azhar Hussain Vs. Rajiv Gandhi 1986 (Supp) Supreme Court Cases 315. It is argued by him that, the plaint is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue. Therefore, it needs to be rejected. In support of this contention he relied upon T.Arivandandam Vs. T.V. Satyapal and another (1977) 4 Supreme Court Cases 467. Lastly, he placed reliance upon Liverpool and London S.P. and I Association Ltd. Vs. M.V. Sea Success I and Another (2004) 9 Supreme Court Cases 512 and prayed to reject the plaint.

5. Ld. Advocate for plaintiffs argued that, the plaint discloses cause of action and the suit is within the limitation. Moreover, the issue of limitation is a mixed question of facts and law, and therefore, it could not be held that no case is made out for proceeding for a trial. In support of this contention he relied upon Surjit Kaur Gill and Ors. Vs. Adarsh Kaur Gill and Ors. AIR 2014 SC 1476. It is argued by him that, for the purpose of deciding application under Order 7 Rule 11 of CPC only averment stated in the plaint alone can be looked in to, merits and demerits of the matter and allegations by the parties can not be gone in to. Even assuming that there is inordinate delay and laches on the part of the plaintiffs, same can not be a ground for rejection of plaint under Order 7 Rule



11 of CPC. In support of this contention he relied upon Judgment in Urvashiben and Anr. Vs. Krishnakant Manuprasad Trivedi dated 14/12/2018 in S.L.P. (C) Nos.23062-23063 of 2018 of Hon'ble Supreme Court. Therefore, he prayed to reject the application.

6. At the outset it is to be noted that, present suit is instituted by a Hindu for partition and separate possession of his share in ancestral property alongwith consequential reliefs of perpetual injunction and mesne profit. It is the case of plaintiffs that, the suit property is ancestral property of themselves and defendants and they are having undivided $\frac{1}{4}$ th share in it. However, the plaintiffs have admitted that, some of the suit properties are already partitioned by oral partition. Apart from it, it appears that some of the defendants were dead at the time of institution of suit. These are made grounds by defendants no. 6 to 8 and 11 to argued that, the plaint does not disclose cause of action and the suit is vexatious. But, it is seen in the plaint that there are other suit properties which are not admitted to be partitioned by plaintiffs. So far as, the pleading in respect of dead defendants is concerned, the provisions of Order 7 Rule 11 does not justified the rejection of any particular portion of plaint. In other words, if the plaint discloses a cause of action in part, it can not be rejected. The concept of partial rejection is in applicable to the provisions of Order



7 Rule 11 of CPC.

7. In Raghwendra Sharan Singh(Cited Supra) the suit summons in earlier suit were served on the plaintiff in the year 2001 and he averred in the plaint that it came to his knowledge with respect to the gift deed on 10/04/2003. It was borne out from the averments in the plaint that till 2003 the plaintiff never disputed the gift deed or never claimed that gift deed dated 06/03/1981 was showy deed of gift. In these set of facts it was held that considering the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting the plaintiff has tried to bring the suit within the period of limitation which, otherwise, is barred by Law of Limitation. In the present case in Para No.19 of the plaint the plaintiffs averred that, the defendants caused obstruction to them in worshipping in temple and latter on 30/07/2021 the defendant no. 19 to 21 sent them noticed and these are incidents when cause of action for present suit arose. It is also their case that, the cause of action for present suit is continuing one. In such circumstances, the ratio laid down in Raghwendra Sharan Singh(Cited Supra) is not applicable to present case.

8. In Madanuri Sri Rama Chandra Murthy (Cited Supra) it was laid down that, the averments in the written



statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 of CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage. In the present case, as stated earlier, the plaint discloses a cause of action in part and there are other suit properties which are not admitted to be partitioned by plaintiffs. In such circumstances, the suit can not be said to be manifestly meritless or vexatious. Therefore, this judgment is not helpful to the defendants no. 6 to 8 and 11. The Judgment in T.Arivandandam (Cited Supra) is also not applicable to the present case for the same reason.

9. In Rajendra Bajoria and Others(Cited Supra) it was laid down that, under Order VII Rule 11 of CPC, the duty is cast upon the court to determine whether the plaint discloses a cause of action, by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law. In the present case, as stated earlier, the plaint discloses a cause of action in part and there are other suit



properties which are not admitted to be partitioned by plaintiffs. The cause of action is pleaded to have arose on 30/07/2021 and it is continuing one. Therefore, this Judgment is not helpful to defendant no. 6 to 8 and 11. The Judgment in P.R. Sukeshwala and another Petitioners (Cited Supra) is also not helpful to the defendant no. 6 to 8 and 11 for the same reason.

10. The Judgment in Mst. Rukhmabai (Cited Supra) speaks about the starting point of right to sue while dealing with article 120 of Limitation Act. However, the ratio laid down therein is not applicable to the present case for the reason that, said ratio is not based upon an application under Order 7 Rule 11 of CPC and in this judgment, the Hon'ble Supreme Court dealt with an appeal against the decree and Judgment in Civil Suit. The Judgment in Khatri Hotels Private Limited and Another (Cited Supra) is also not applicable to the present case for the same reasons.

11. The Judgment in Selina Sheehan (Cited Supra) deals with a case of rejection of plaint on the ground of the suit being undervalued and non supply of requisite court fees. However, such is not a case of present defendants. Therefore, this judgment is not helpful to them.

12. The Judgment in Saleem Bhai and Others (Cited



Supra) deals with a case wherein the court had directed the defendant to file his written statement before deciding an application Order 7 Rule 11 of CPC. The question before Hon'ble Supreme Court in that case was whether an application under Order 7 Rule 11 ought to be decided on the allegations in the plaint and filing of the written statement by the contesting defendant is irrelevant and unnecessary. However, in the present case this situation did not arise and, therefore, the ratio laid down in this judgment is not helpful in this case.

13. The Judgment in Azhar Hussain (Cited Supra) deals with an Election Petition filed beyond the period of Limitation. In the present case the limitation is a mixed question of Law and fact as laid down in Surjit Kaur Gill (Cited Supra). Therefore, the Judgment in Azhar Hussain (Cited Supra) is not applicable to the present case.

14. The plaint discloses cause of action in part in the present case. Therefore, the Judgment in Liverpool and London S.P. and I Association Ltd.(Cited Supra) is not helpful to defendant no. 6 to 8 and 11. As laid down in Urvashiben (Cited Supra) the merits and demerits of the matter can not go in to at this stage, while dealing an application under Order 7 Rule 11 of CPC. In the present case from a reading of the averments in the plaint, it can not be said that, the suit is barred by limitation. The



R.C.S. No. 186/2021
Shankar Badadhe and Others

Vs.

Anil Badadhe and Others

CNR NO. MHPU130005622021

starting point of limitation and the facts constituting it can be adjudicated after trial. Even assuming that, there is inordinate delay and laches on the part of plaintiffs, same can not be a ground for rejection of plaint. Therefore, the suit does not appear to be barred by any law from the statement made in the plaint. In such circumstances the application needs to be rejected. Hence, I pass the following order:

ORDER

Application stands rejected.

Place : Saswad
Date : 15/01/2022

(N.H. Tikhe)
Civil Judge Junior Division
Saswad



R.C.S. No. 186/2021
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CERTIFICATE

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

Name of Steno : M. R. Pawar, Stenographer, (Grade III)

Court Name : Shri. N. H. Tikhe
Civil Judge Jr. Division, Saswad.

Date of Judgment : 15/01/2022

Judgment signed by presiding officer on : 15/01/2022

Judgment uploaded on : 15/01/2022