

MHPU180021622016



RCS No. 305/2016

Pravin etc Vs. Yashwant etc.

ORDER BELOW EXH. 59.

(Passed on 17th day of February, 2021)

This is an application on behalf of defendant No. 3 for rejection of plaint under Order VII Rule 11 (d) of C.P.C., 1908.

2. It is the contention of the applicant that plaintiffs have filed suit for reliefs of recovery of encroached portion as well as perpetual injunction against defendants. According to the applicant, as per pleading in the plaint plaintiffs have made averments "they have measured suit land on 07.03.2013 through T.I.L.R.. T.I.L.R. fixed boundaries on 20.08.2013. Accordingly, he has issued measurement map in the May, 2015." As per pleading in the Para No. 3 and 4 it reveals that defendants have encroached to the extent of 13 R. in the suit land. Plaintiffs have asked for delivery of possession time to time. However, defendants have avoided to do so. According to the applicant on 20.08.2013 boundaries have been fixed by the T.I.L.R. office. Therefore, suit ought to be filed within 3 years from the date of fixation of boundaries. However, plaintiffs have filed suit on 17.09.2016. Therefore, suit is barred by law of limitation. Therefore, plaint liable to be rejected. Lastly, he prayed for rejection of plaint.

3. Plaintiffs have filed reply (Exh.61) and raised objection to allow the application. It is the contention of plaintiffs that the suit is not barred by law of limitation. Therefore, plaint not liable to be rejected under order VII rule 11(d) of Civil Procedure Code, 1908. Applicant has not raised objection in this w.s. about limitation. The suit is well within period of law of limitation. The application is not tenable in the eye of law. Therefore, liable to be rejected. Accordingly, prayed for rejection of the application.

4. Heard learned advocate for the applicant. He has reiterated the contents of application. Further, he has relied upon article 137 of Limitation Act, in support of his contention. Apart from article 137 of Limitation Act, he has relied upon Manohar Daulatram Ghanshamramani Vs. Janardhan Prasad Chaturvedi and ors., MANU/MH/2324/2019. Lastly, prayed to allow the application.

5. Heard learned advocate for plaintiffs. He submitted that limitation is of 12 years to file the suit for recovery of possession. The suit is filed within the period of 12 years. Suit is not barred by law of limitation. Hence, prayed for rejection of an application.

6. In view of rival submissions of both the parties, following points arise for my determination. I have recorded my findings against the same for the reasons thereon.

POINTS**FINDINGS**

1] Whether the plaint is liable to be rejected under Order VII, Rule 11 (d) of C.P.C., 1908 ?

... In Negative.

2] What order ?

... Application is rejected.

-R E A S O N S-**AS TO POINT NO.1 :-**

7. It is well settled law that while examination, whether the plaint can be rejected under Order VII, Rule 11 of C.P.C., 1908, the Court has to confine itself to the allegations in the plaint. Thus, any defence, actual or probable cannot be looked into at this stage. This position has been reiterated in the case of Manohar Daulatram Ghanshamramani Vs. Janardhan Prasad Chaturvedi and ors., MANU/MH/2324/2019.

8. Therefore, I do not find any substance in the objection raised on behalf of plaintiffs that defendants have not raised any objection about limitation in their w.s. Therefore, application under Order VII, Rule 11 of C.P.C., 1908 is not maintainable.

9. In view of aforesaid settled position, I have gone through the entire plaint. On perusal of plaint, it shows that plaintiffs have filed suit for reliefs of recovery of encroached portion and perpetual injunction. According to them, T.I.L.R. Daund has measured suit land of 07.03.2013. Further, T.I.L.R. office has fixed

boundaries on 20.08.2013. Since, the date of fixation of boundaries plaintiffs have requested defendants to handover possession of encroached portion. However, they have avoided to do so on one and other pretext.

10. The suit has been presented on 16.09.2016 in the Court. Admittedly, from 20.08.2013 suit is not filed within period of 3 years. Learned advocate for the applicant has relied upon article 137 of Limitation Act which reads as under.

137. Any other application for which no period of limitation is provided elsewhere in this Division. The period of limitation is Three years. It commence when the right to apply accrues.

11. Plaintiffs suit has been based on title for recovery of encroached portion and perpetual injunction. The limitation period has been prescribed in article 65 of the Limitation Act in the suit for possession based on title which reads as under.

65. For possession of immovable property or any interest therein based on title. Period of limitation is twelve years. It commence when the possession of the defendant becomes adverse to the plaintiff.

12. In such circumstances, I do not find any substance that article 137 of Limitation Act will be applicable to the present suit.

The suit has been filed within period of 12 years from the cause of action. Therefore, suit is well within the period of limitation as per article 65 of Limitation Act, 1963. Therefore, plaint is not liable to be rejected under Order VII, Rule 11 of C.P.C., 1908. As I come to the conclusion that from the allegations in the plaint, the plaint is not liable to be rejected under Order VII Rule 11 (d) of C.P.C., 1908 I answer point No.1 in negative and in answer to point No. 2 pass following order.

ORDER

The application is rejected with costs.

Daund.
Date : 17/02/2021.

(N. B. Jadhav)
Civil Judge Junior Division,
Daund [Court No.1].

C E R T I F I C A T E

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

Name of the Court : Shri. N. B. Jadhav, Civil Judge
Junior Division, Daund [Court
No.1].

Name of the Steno : Miss. F. J. Bijapure, Steno Grade-3.

Judgment date : 17/02/2021.

Judgment signed by P.O. on : 17/02/2021.

Judgment uploaded on : 18/02/2021.