

ORDER BELOW EXHIBIT NO.37 IN RCS. NO.76/2021

This is an application filed on behalf of defendant No.1-A, 1-C-1 and 1-C-3 under order 7 Rule 11 (d) of Code of Civil Procedure for rejection of plaint.

02. It is contended by them that the suit filed by plaintiffs is not tenable in the eyes of law. It is further contended that plaintiffs have raised dispute regarding sale deed executed on 07/02/1994 which is exhibited in respect of Class-2 land. Therefore the alleged sale deed itself void ab initio. It is further contended that the alleged sale deed executed in the year 1994 and therefore this suit is not within limitation. Therefore plaint is liable to be rejected as it is barred by law.

03. Plaintiffs have filed their say at Ex.40 and strongly opposed this application contending that they have specifically mentioned the cause of action in the plaint. Plaintiffs have right to claim possession on the basis of alleged sale deed, therefore this suit is within limitation. It is further contended that plaintiffs have avoided to bring the necessary permission from appropriate authority and also avoided to hand over the possession as per sale deed. Therefore plaintiffs have constrained filed this suit which is within limitation. On these grounds they have prayed for rejection of the application.

04. Perused the application and say filed thereon. Also perused the record. Heard, both sides.

05. Defendant No.1-A, 1-C-1 and 1-C-3 have prayed for

rejection of the plaint under order 7 rule 11 (d) of The Code of Civil Procedure. As per the provisions laid down under order 7 Rule 11 (d) the plaint can be rejected if it is barred by law. It is settled position of law that while considering the application under this provision only the averments made in the plaint needs to be taken into consideration. Therefore it is necessary to see that whether from the averment of the plaint the suit is barred by law or not.

06. The plaintiffs have filed the suit for possession on the basis of sale deed executed in the year 1994. in the plaint plaintiffs have contended that though the contents regarding handing over the possession are mentioned in the said sale deed, however the actual possession was not handed over. It is further contended that defendants have avoided to hand over the possession when demanded by the plaintiffs. It is further contended that defendants have also avoided to bring the necessary permission from the appropriate authority. Therefore plaintiffs have filed this suit for possession and other some reliefs regarding permission.

07. From perusal of aforesaid averments made in the plaint it appears that plaintiffs have alleged that defendants have avoided to hand over the possession, therefore they have filed suit for possession and other reliefs. Defendant No.1-A, 1-C-1 and 1-C-3 have raised objection on the point of limitation. The issue of limitation is mixed question of law and fact which needs to be determined after evidence of both parties. The legal

sancity of alleged sale deed can also be determined after evidence of both parties. Therefore at this stage from avernments of the plaint the suit of plaintiffs cannot be thrown out on the grounds raised by defendant No.1-A, 1-C-1 and 1-C-3. Therefore this application is having no merit and liable to be rejected. Hence I proceed to pass the following order

ORDER

Application Ex.37 is hereby rejected.

Ghodegaon
Date :- 21/06/2025

(Santosh L. Vaidya)
Jt. Civil Judge, J.D.,
Ghodegaon Dist. Pune