

**Krushna Bhagat and others
Vs. Jagadish Bhagat and others.**

ORDER BELOW EXH. 93 IN R.C.S.NO. 256/2009

1) Original Plaintiff i.e Deceased Shri. Krishna, the ancestor of plaintiffs, had agricultural properties in village- Bambavi, Taluka Panvel, District Raigad. The same were acquired by the Government of Maharashtra. This being so, the plaintiffs filed the present suit for partition, separation of share, declaration and injunction in the year 2011.

2) During the pendency of the present matter, the plaintiffs filed two amendment applications vide Exh 78 and 82. They were for addition of the plot which was received by the original plaintiff, deceased Shri. Krishna, in lieu of the acquisition of the suit properties mentioned in plaint para No. 03. Apart from it, the plaintiff has also sought for cancellation of the lease agreement dated 28/05/2009 executed between him and defendant No. 03- CIDCO. Furthermore, they also sought a relief of cancellation of the tripartite agreement dated 09/10/2009 executed amongst original plaintiff, defendant No. 03- CIDCO and one party by name M/s Nirankar Co-Operative Housing Society. They also prayed to add the party as defendant in the present suit. Those applications came to be allowed subject to the point of limitation.

3) Upon the amendment carried out by the plaintiffs, the defendant No. 02 filed the present application below Exh. 93 for rejection of plaint on the ground that, the prayers which are sought by plaintiffs are time barred and on this ground the plaint deserves to be rejected U/O 7 R11 of CPC.

4) The plaintiffs have not filed any say to this application.

5) Heard learned advocate Shri.K.R.Bhoir for defendant No. 02. He contended that, with the ammendment of plaint, the present suit has become barred by limitation and the plaint is liable to be rejected. In support of his argument, he relied upon rulings reported in **2020 (7) CPSC 3 in Dahiben Vs. Arvindbhai Kalyanji Bhanushali (Gajara) (D) thr. LR's and others** **2. 2019 (3) CPSC 53 in Raghavendra Sharan Singh Vs. Ram Prasanna Singh (dead) by L.R.'s.**

6) Whereas, learned advocate Shri.S.K.Rane for plaintiffs contended that, the present application is misconceived and a false one. The same is liable to be rejected.

7) Perused application, plaint and the documents filed by plaintiffs in support of plaint.

8) It is not disputed that, Original Plaintiff

i.e Deceased Shri. Krishna, the ancestor of plaintiffs, had agricultural properties in village- Bambavi, Taluka Panvel, District Raigad. The same were acquired by the Government of Maharashtra. In lieu of the acquisition of an agricultural land bearing survey No. 12/2-A of village Bambavi, Taluka Panvel, District Raigad, a developed plot bearing No. 105 admeasuring to 250 sq.mtrs. in Sector No. 20 at village Ulave came to be allotted. A lease deed to that effect came to be executed on 28/05/2009. Later on, the said plot was transferred to M/s. Nirankari Co-operative Housing Society on 09/10/2009 by way of tripartite agreement. This being so, para No. 13 of the plaint shows that, the cause of action arose on 04/04/2011 when they made enquiry in respect of the plot with defendant No. 03- CIDCO. The plaintiffs further mention that, they also took an objection in writing on 18/04/2011. Upon this, the defendant No. 03 gave reply to them by issuing a letter on 26/06/2011 for bringing a decree from a competent civil court showing allocation of shares of plaintiffs in it. For this reason, the present is filed.

9) The defendants duly appeared against the receipt of suit summons and notice of interim application. They filed their written statement in the year 2016 and apprised about the facts of the execution of lease deed on 28/05/2009 and tripartite agreement on 09/10/2009 by the original plaintiff.

10) From the facts of the plaint and the documents filed alongwith it, clearly goes to show that, plaintiffs had knowledge about allotment of a plot to original plaintiff against acquisition of the suit properties on two occasions, firstly, in the year 2011 when CIDCO i.e. defendant No. 03 gave reply, which is at Exh. 4/6, to the plaintiff's objection, which is at Exh. 4/5, and secondly, in the year 2016 when the defendants filed their written statement.

11) On the basis of the chronological events which took place in the present matter clearly goes to show that, plaintiffs had knowledge about the allotment of the plot at the time of filing of the suit in the year 2011 itself or Moreso, at the time, when defendants filed their written statement in the year 2016. Since then, plaintiffs have not taken any steps to bring the same on record. They kept mum till 2019. Only, after the change of their advocate, the amendment was sought and carried out by seeking appropriate order from this court.

12) From the bare perusal of the dates clearly goes to show that, the present suit is barred by limitation because for seeking a relief of cancellation of lease deed and tripartite agreement are required to be made within three years. Both these documents are of year 2009. The relief of cancellation is sought in the year 2019 by way of an ammendment. The said prayers can't be granted now. On this backdrop, the other reliefs

claimed by the plaintiffs can't be granted as the original plaintiff has himself got executed a lease deed of the plot on 28/05/2009 from defendant no-3 CIDCO. Thereafter, he transferred the plot to M/s. Nirankari Co-operative Housing Society on 09/10/2009 by way of tripartite agreement. It means, he has duly recieved the entire consideration for it. Moreover, there is no grievance about non reciept of any consideration amount. As, the plaintiffs are seeking relief of cancellation of lease deed and tripartite agreement, both, of year 2009, in the year 2019 by way of ammendment. The same is barred by law of limitation and plaint is liable to be rejected U/O 7 R 11 of CPC, therefore, asking of any other reliefs of partition, seperation of shares, declaration and injunction in respect of the said plot does not arise and they can't be granted. Hence, the following order :

ORDER

01	The plaint is rejected under Order 7 Rule 11(d) of C.P.C.
02	Decree be drawn up accordingly.

Panvel.
Dt. 10-03-2022

(M. M. Rao)
Civil Judge, Sr. Dn., Panvel.

