



ORDER BELOW EXH. 28

1. The present application is filed by defendant No. 4, 6, 7 & 9 as per Order 7 Rule 11 (a)(b)(c) and (d) of the Code of Civil Procedure.

2. It is alleged by defendants that, present suit filed without cause of action, plaint nowhere discloses legal and valid cause of action. It is further alleged that suit property is not properly valued by the plaintiff. Present suit based on the development agreement dated 17.12.2014 and as per the agreement value of the property is Rs. 7,20,63,000/-. The plaintiff has not valued the suit as per the agreement value. The claim of plaintiff is under-valued. The plaintiff has not paid court fee as per the agreement value of the suit property. It is further alleged that disputed development agreement is executed on 17.12.2014 and plaintiff is aware of the development agreement since year 2014. Therefore, present suit needs to be filed within three years from the date of agreement but present suit filed in the year 2023. Hence suit is barred by law of limitation. With these above stated grounds defendant requested to reject the plaint.

3. Plaintiffs resisted the application by filing his say at (Exh.33). In the say it is stated that, plaintiff has properly valued the suit property as per section 6 (iv) (j) as plaintiff is not party to the development agreement. In the year 2023 plaintiff came to knowledge that development agreement is not canceled, therefore, plaintiff has filed present suit within the period of limitation. This application is filed by defendant No. 2 only to prolong the matter

hence, he prayed for rejection of the application.

4. Considering the submissions of both the parties, the following points arose for my determination along with finding and the reasons thereon are as under -

	<u>Points</u>	<u>Findings</u>
1.	Whether plaint discloses cause of action ?	In the Affirmative.
2.	Whether relief claimed is under valued?	In the Negative.
3.	Whether the suit appears from the statement in the plaint to be barred by law of limitation ?	In the Negative.
4.	What order?	As per final order

REASONS

5. Heard both advocates at length. Perused the application, say of plaintiff and plaint.

As to point No. 1

6. It is settled law that in order to deal with the application under Order 7 Rule 11 of Code of Civil Procedure, Court shall consider only the averments in the plaint. The plaint is required to be read as a whole. The defense taken by the defendants in the written statement or any application filed by them, cannot be the basis to decide the application under Order 7 Rule 11(a) (b) (c) and (d) of Code of Civil Procedure.

7. I have perused the prayer clause of plaint form it appears that, plaintiff has filed the suit for declaration and injunction. It is admitted position that, suit property was mortgaged with State Bank of India branch- Warali Mumbai and plaintiff have purchased the suit property in the E-auction. After

the E-auction in the month of January 2003. Plaintiff has taken search at office of Sub- Registrar at Khalapur. He came to know that agreement for development dated 17.12.2014 executed by defendant no. 4 to 9 in favor of defendant no. 1 is not canceled, therefore, plaintiff has filed present suit. Para 13 of the plaint has specifically mentioned the cause of action. Therefore, contention of defendants that plaint does not disclose cause of action is not proper.

8. Next contention of defendants that suit is under-value and written upon paper insufficiently stamped. To substantiate his contention advocate for the defendant relied on the rullings of **Shri. Abdulsattar Gulabbhai Bagwan v/s Shri. Vaibhav Lxmangiri Gosawi & Others** Writ Petition No. 401/2011, Hon'ble Bombay High Court held that if plaintiff seeking avoidance of the sale deed executed by defendant no. 1 and 2 in favor of defendant no. 3 to 5 and therefore, the plaintiff would have to value the said suit in terms of Section 6 (iv)(ha) and not in terms of clause 6 (iv)(j).

Advocate for the defendant argued that the suit filed by the plaintiff is for declaration that agreement for development dated 17.12.2014 by defendant no. 4 to 9 in favor of defendant no. 1 is void and not binding upon him. Therefore, plaintiff need to value the suit property as per the amount mentioned in the agreement for development. The plaintiff failed to do so, the relief claim is under-valued. On the contrary Advocate for the plaintiff argued that plaintiff is not parties to the agreement, therefore, plaintiff is not liable to pay court fee as per the agreement value.

9. The Hon'ble Bombay High Court in **Sandip Jagdale Vs Ramdas Ambekar 2018 SCC online Bombay 14784**, rely on the

ratio laid down by Hon'ble Apex Court in **Suhrid Singh @ Sardool Singh Vs Randhir Singh 2010(2) SC 670** and also ratio laid down by the Hon'ble Bombay High Court in **Prism Reality Vs Govind Yashwant Khalade 2015 (4) Bom.C.R. 370** as held that if plaintiff is not party to a document which document is sought to be declared as illegal and not binding, such case would fall under Section 6 (iv) (j) and not under Section 6 (iv)(ha) of the Maharashtra Court Fees Act.

In view of ratio laid down by their lordship in the above case law cited (supra) the court fees paid by the plaintiff is proper and legal. The case law cited(supra) by the defendant is not applicable to the present set of facts.

10. Defendants have opposed the suit on ground that, the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by law of limitation. He further argued that agreement for development, which are not sought to be canceled was executed in the year 2014. It is submitted that suit have been filed in the year 2023, i.e. after laps of more than 8 years and so the said suit are clearly barred by the law of limitations. Ld. Advocate for the defendant relied upon the ruling C.S. Ramswami Vs B. K. Senthil, Civil Appeal No. 500/2022, in this case Hon'ble Apex Court observed that issue with respect to limitation is mixed question of law and facts and therefore, such an issue of limitation is required to be considered at the time of trial.

11. To counter this submission Ld. Advocate for the plaintiff submitted that suit property was mortgaged with State Bank of India branch- Warali Mumbai and plaintiff have purchased the suit property in the E-auction. After the E-auction in the month of

January 2003. Plaintiff has taken search at office of registrar at Khalapur. He came to know that development agreement dated 17.12.2014 executed by defendant no. 4 to 9 in favor of defendant no. 1 is not canceled, therefore, he has filed present suit, which is within the period of limitation.

12. In so far as the rejection of plaint on the ground of limitation is concerned, it is needless to emphasize that limitation is a mixed question of fact and law. Apex Court referred its earlier judgment in **P.V. Guru Raj Reddy vs. P.Neeradha Reddy**, wherein it was observed that the rejection of plaint under Order VII Rule 11 is a drastic power conferred on the Court to terminate a civil action at the threshold. Therefore, the conditions precedent to the exercise of the power are stringent and it is especially so when rejection of plaint is sought on the ground of limitation.

13. It will be appropriate to mention here that if the question of limitation is connected with the merit of the claim, such issue is to be tried along with other issues. A plaint cannot be rejected on the ground of limitation especially when it is a mixed question of fact and law and where there is no clear or specific admission in the plaint suggesting that the suit is barred by limitation. For the sake of argument if it is admitted that plaintiff has knowledge regarding agreement for development, till he might in the impression that mortgagee bank has taken every care before execution of sale deed in favor of plaintiff. So contention of defendant that plaintiff has knowledge of agreement for development executed in the year 2014 and suit is not filed within the period of limitation is not proper and correct.

14. Considering the above mentioned reasons, the plaint cannot be rejected in exercise of the power under Order 7 Rule 11(a)(b)(c) & (d) of the Code of Civil Procedure. Hence, I answer point No. 1 in the Affirmative and point No. 2 & 3 in the “Negative”.

As to point No. 4

15. Considering the above mentioned reasons, Prima facie plaint discloses cause of action, relief claim is not under-valued and plaint is not written upon paper insufficiently stamped. In view of the above circumstances, application liable to be rejected. Hence, I answer point No. 4 accordingly and pass the following order:

ORDER

The application is rejected.

Date : 10.11.2023

Place: Khalapur

(R.D.Wabale)

Civil Judge Junior Division, Khalapur