

Special Civil Suit No.95/2023
Order below Exh.43

Through this application, defendant No.2 & 3 prayed reject the plaint vide Order VII Rule 11 of CPC.

02) Perused the application. Say filed by plaintiffs. Heard, Ld. Advocate Mr. Rajesh Sheth for defendant No.2 & 3 and Ld. Advocate Mr. Kailas Pawar for plaintiff.

03) It is contention of defendants that under present suit plaintiffs sought relief of cancellation of disputed sale deed doc. No.2269/2015 dt.28/07/2015, declaration that sale deed doc. No.2704/2015 & 2705/2015 dt.15/09/2015 and sale deed doc. No.2529/2021 dt.30/12/2021 not binding and relief of perpetual injunction restraining defendant No.3 & 4 creating further third party interest in suit properties and construction on the properties and disturbance to be plaintiff possession.

04) It is submission of Ld. Advocate for the plaintiff that it was for the plaintiff to value the suit on consideration amount all disputed sale deeds and to pay the Court fees thereon. But the plaintiff not done so. Thereby the suit is under valued. Beside plaintiff's reliefs of cancellation of sale deed and declaration are time bard. For the reason plaint is liable to be rejected.

05) On the other hand it is argument of the plaintiff that suit properties are purchased properties of plaintiff. Taking advantage of the fact that plaintiff resides at

Sikandarabad (Telangana), defendant No.1 by preparing false documents and impersonation with help of other got the sale deeds of suit properties executed in his favour vide registered sale deed doc. No.2269/2015 dt.28/07/2015 showing consideration of Rs.8,00,000/-. Thereafter, defendant No.1 sold the suit property, Gat No.28 to Defendant no.3 and Gat No.29/10A to defendant No.2 under registered sale deed doc. No.2705/2015 and 2704/2015 dt.16/09/2015 respectively. Then defendant No.2 sold property survey No.29/10A to defendant No.4 under registered sale deed doc. No.3529/2021 on 30/12/2021. The said fraud revealed in the month of October 2022, when plaintiff son had been to Mahad and had obtained some revenue records. It is in this facts and circumstance the plaintiff constrained to file present suit.

06) It is further argued that plaintiff is not executent of either disputed sale deed. Plaintiff sought cancellation of first disputed sale deed No.226/2015 dt.27/07/2015 and valued the plaint on consideration amount (Rs. 8,00,000/-) of said sale deed executed impersonation and paid Court fees as per section 6 (iv)(ha) of the Maharashtra Court Fees Act. Relief of declaration as not binding in respect of subsequent sale deeds (doc. No.2704/2015, 2705/2015 & 3529/2021) being consequential valued the said relief vide section 6(iv)(j) of Maharashtra Court Fees Act. According to him he has properly valued the suit and paid the required Court fees. It is further argument that the plaint cannot be

rejected under Order VII Rule 11 of CPC on the point of limitations since. Thus prayed to reject the application

07) Given thoughtful consideration to rival submission. Under present suit plaintiff sought relief of cancellation of sale deed doc. No.2269/2015 dt.28/07/2015 alleging it to be executed impersonation. Further relief of declaration that subsequent sale deeds doc. No.2704/2015 and doc. No.2705/2015 dt.15/09/2015 executed by defendant no.1 in favour of defendant no.2 & 3 respectively and sale deed doc. No.3529/2021 dt.30/12/2021 executed by defendant No.2 in favour of defendant No.4 are not binding. And further relief of perpetual injunction in terms of prayer clause E to G in plaint.

08) Considering allegation in the plaint it is seen that first sale deed dt.28/07/2015 is shown to be executed by plaintiff but actually executed impersonation. Plaintiff has sought relief of cancellation of said sale deed alleging it to be executed impersonation and result of fraud. Valuation clause of plaint speaks that plaintiff has valued plaint relief on of Rs.8,00,000/- which appears to be consideration amount of first disputed sales transaction dt.28/07/2015. Said valuation appears in consonance with provision of section 6(iv)(ha) of the Maharashtra Court Fees Act. Plaintiff also sought relief of declaration of subsequent sale deeds doc. No.2704/2015 & 2705/2015 dt.15/09/2015 and sale deed doc. No.3529/2021 dt.30/12/2021 executed

between plaintiff No.1 to 4 inter-se. Thus it is seen that relief in respect of said sale deeds appears to be consequential relief. Besides plaintiff is not an executent of said sale deeds. Considering these aspects it is observed that plaintiff rightly valued reliefs in respect of subsequent three sale deeds vide section 6 (iv)(j) of Maharashtra Court Fees Act. Having considered discussed aspects it is observed that objection raised by defendant No.2 & 3 that plaint is under valued is devoid of merit and same is rejected.

09) As per as second objection of defendant No.2 & 3 that the relief claim under suit is time bard. On this count also plaint is rejected. But it is observed that issue of limitation is mixed question of fact and law and same needs to be dealt with the issues under Order XIV Rule 2 of the CPC. Considering the same it is observed that the objection of defendant No.2 & 3 that plaint is liable to be rejected being time bard is no sustainable and same is rejected.

10) In short defendant No.2 & 3 failed to made out ground for rejection of plaint. Resultantly following order.

ORDER

1. Application is rejected.
2. No order as to cost.

Place: Mahad
Date : 17/01/2024

Sd/-
(P. M. Unhale)
Civil Judge, S.D. Mahad