



ORDER BELOW EXH. 40 IN SPL.C.S. NO. 544/2023

(Shobhatai Mane Vs. Sardar Shelke & Ors.)

[CNR No. MHSN02-002329-2023]

1. This application is under Order VII, Rule 11 of Code of Civil Procedure.
2. According to defendants, as per contention of plaintiff cause of action arose to file this suit in the month of July-2020. This suit is not filed within one year. This suit is filed in the month of November-2023, therefore, this suit is not within limitation and plaintiff is liable to be rejected. Defendants requested to reject this plaintiff.
3. Plaintiff filed reply vide Exh. 42 and denied all adverse allegations against her. Plaintiff submitted that, issue of limitation is to be decided along with other issues. Plaintiff has pleaded that suit is within limitation. This suit is for injunction also, hence, this application is liable to be rejected.
4. Heard both sides at length. I have gone through the record.
5. Counsel for defendants submitted that, suit is not within

limitation. Therefore, plaint is liable to be rejected. Article 58 of the Limitation Act is applicable. He requested to reject the plaint.

6. Counsel for plaintiff submitted that, Article 65 of the Limitation Act is applicable, plaint cannot be rejected. He requested to reject the application. Further he submitted that, there is no need to seek declaration about invalidity of the document, hence, question of limitation does not arise. In support of the submissions, plaintiff relied on the authority in **Kewal Krishnan Vs. Rajesh Kumar¹** and **State of Maharashtra Vs. Pravin Jethalal Kamdar (Dead) by LRs²**.

7. I have gone through the record. Plaintiff requested for partition, declaration that Power of Attorney dated 21.07.2020 and alleged sale deed is not binding upon her. Further she requested for separate possession of her 1/5 share in the suit property. She requested to declare Gift Deed dated 24.01.2020 is not binding on her share.

8. By considering her prayer it is clear that this suit is not only for declaration but also for partition and separate possession of shares in suit property.

9. Order VII, Rule 11 of Code of Civil Procedure reads in verbatim as under :-

¹ AIR Online 2021 SC 1069

² AIR 2000 SC 1099

- 11. *Rejection of plaint.*** - *The plaint shall be rejected in the following case :*
- (a) where it does not disclose a cause of action;*
 - (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
 - (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
 - (d) where the suit appears from the statement in the plaint to be barred by any law;*

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

10. I have gone through the authority in **Kewal Krishnan** (cited supra) wherein the Hon'ble Supreme Court held that, a sale of an immovable property has to be for a price. The price may be payable in future or partly paid and the remaining payable in future. The payment of price is an essential part of a sale covered by Section 54 of the Transfer of Property Act. If a sale deed in respect of an immovable property is executed without payment

of price and if it does not provide for the payment of price at a future date, it is not a sale at all in the eyes of law. It is of no legal effect. Therefore, such a sale will be void. It will not effect the transfer of the immovable property. The Hon'ble Apex Court was considering a decree passed by Civil Court. Therefore, the scope of inquiry in the proceedings which gave rise to the Special Leave Petition arose out of Civil Court and, therefore, the Hon'ble Apex Court was considering merits and validity of rights created in favour of purpose to the civil suit and in that context, the Court observed in favour of the appellant. Facts in this suit are different one. Hence, with kind respect to aforesaid authority it is found that. Defendant is not entitled to take benefit of said authority.

11. In the authority **State of Maharashtra** (cited supra) wherein the possession was alleged to be taken under a void document and a suit was filed for declaration and recovery of possession, the Hon'ble Apex Court has held that there was no need to seek declaration about the invalidity of the document and that even if the relief of recovery of possession is sought for, the suit would be governed by Article 65 of the Limitation Act and not by Article 58 of the Limitation Act. By considering the observations of Hon'ble Apex Court, in a suit for possession and declaration of nullity of document is claimed, then, limitation is 12 years. In present suit before us, plaintiff requested to declare nullity of Power of Attorney, sale deed and gift deed. Whether it is

necessary to claim such declaration or not is to be considered at the time of filing hearing. In such a situation it cannot be said that suit is not within limitation. The above authority is supporting to the contention of plaintiff.

12. In the light of above observations by Hon'ble Apex Court, if suit is for possession, then, limitation is 12 years. In such a situation at this stage it cannot be said that suit is not within limitation. Therefore, plaint cannot be rejected under Order VII Rule 11 of Code of Civil Procedure. This application is liable to be rejected. I proceed to pass following order.

ORDER

- (1) Application is rejected.
- (2) Parties to bear their own cost.

Sangli
Date : 14.10.2024

(A.B. Shendge)
III Joint Civil Judge Senior Division,
Sangli