

Order Below Exh.21 in Regular Civil Suit No. 407/2023
(Nawajsharif Mujawar Vs. Collector Sangli etc.)
(CNR No. MHSN020022682023)

Perused the application and say below Exh.24. Heard both learned advocates.

2. Present application has been moved by the defendants under Order 7 Rule 11 of the Code of Civil Procedure. The defendants have prayed for rejection of plaint mainly on two grounds. Firstly that, no cause of action has arisen to file such suit and secondly on the ground that the suit is barred by the provisions of the law of limitation and provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1999. In support of his contentions learned advocate for defendants relied upon following decisions of the Hon'ble Apex Court and the Hon'ble High Court-

1. *National Insurance Company Ltd., Vs. Navrom Constantza and others reported in (1988) AIR (Calcutta) 155.*
2. *M/s. J. Patel and Company Vs. National Federation of Industrial Co-operative Limited reported in (1966) AIR (Calcutta) 253.*
3. *Ramesh Chandra and others Vs. Vinod Bhargav and others reported in (2019) 4 MPLJ 483.*
4. *Tarvindrarsingh Mahendrasingh Dhillan Vs. Ambadas Asaram Mhaske and others reported in IndiaLaw Lib 2403014 Bombay High Court.*
5. *Raghwendra Sharan Singh V Ram Prasanna Singh (Dead) by Lrs. Reported in AIR 2019 Supreme Court 1430.*

6. *Sukhbiri Devi and Ors. Vs. Union of India and Ors. Reported in AIR 2022 Supreme Court 5058.*
7. *Vrundavan Cooperative Housing Society Limited Vs. Vrundavan Development Corporation and Others reported in IndiaLawLib. 2415957 Gujarat High Court.*
8. *P. Gopirathnam and 4 others. Vs. Ferrodous Estate (PVT.) Ltd., reported in (1999) 2 CTD 181.*

3. I have gone through these decisions. In these decisions the Hon'ble their Lordships have held that when the plaint apparently does not disclose cause of action or when it is apparently barred by law of limitation or is an example of clever drafting to bring the suit within limitation, then such plaints are required to be rejected at the threshold. When apparently suit appears to be barred by law of limitation in such cases it can not be said that limitation is mixed question of law and facts.

4. So also, in one of the supra cited Judgment the Hon'ble their Lordship has held that for grant land prior permission of the Collector is precondition for transferring or alienation it when no such permission has been obtained and sale-deed has been executed then such sale-deed is null and void and non-est. So keeping in minds the observations of the Hon'ble their Lordship, now I would like to discuss the facts of the case in hand.

5. So far as ground raised by the the defendants for rejection of plaint is concerned, the first contention of the defendants is that no cause of action has arisen to file such suit.

The defendants are not trying to alienate the suit property. No source of information has been given in the plaint nor the details have been given that when and where such incident of trying to sale or cause obstruction has taken place. Therefore, due to absence of cause of action plaint is required to be rejected.

6. In this regard when plaint Exh.1 is looked into we can see that it is the contention of the plaintiff that still name of the defendant No.3 is appearing in 7/12 extract of the suit property. Taking disadvantage of it defendant No.3 is trying to create third party interest in it. So also on 01/11/2023 he came to know from the villagers that defendant No.3 is going to take forcible possession of the suit property from the plaintiff. Therefore, the plaintiff is constrained to file present suit. These contentions in the plaint are sufficient to show the prima-facie cause of action to file the suit. Whether these contentions are correct or illusory is the question which can not be decided at this stage.

7. What is a cause of action has been defined in ***Swamy Atmananda Vs. Sri Ramakrishna Tapovanam (2005) 10 SCC 51*** and has been reiterated in ***Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust (2012) 8 SCC 706***, as being a bundle of facts that are material and relevant for the decision of the case and which are required to be proved by the plaintiff to be entitled for reliefs claimed in the suit.

8. In the present case, on perusal of plaint, it is observed that the plaintiff has disclosed a cause of action in his favour. The

proof or disproof of the same is a matter of trial. Accordingly, the contention of the defendant finds no merit.

9. Now we turn to second objection raised for rejection for plaint. It is the contention of defendant No.3 that suit for declaration is required to be filed within 12 years, when the declaration is sought on the basis of ownership and for any other declaration the limitation is of three years. In this suit, the plaintiff is claiming declaration of ownership on the basis of sale-deed dated 27/12/1995. Therefore, the suit was required to be filed within 12 years from the sale-deed. Secondly, it is admitted position that suit land is a land allotted to defendant No.3 as a project affected person. So before transferring it or alienating it, prior permission of the Collector is pre-requisite. Admittedly, alleged sale-deed has been executed without obtaining such permission. So it is non-est or null and void. Further Section 24 of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 provides that suit is not tenable before the Civil Court. Therefore, plaint is required to be rejected.

10. In the light of these objections when plaint is looked into, it can be seen that the plaintiff is claiming first declaration that he has become owner of the suit property on the basis of sale-deed dated 27/12/1995. So limitation for said declaration is 12 years from the date of the denial of ownership of the party and not from execution of sale-deed. It is the contention of the plaintiff that he is in possession of the suit property on the basis of alleged sale-deed since 1995. Till filing of the suit or date of cause of

action, defendant No.3 had not caused any obstruction and interference in his peaceful possession and enjoyment of the suit property nor had denied ownership. However, on 01/11/2023 he came to know from the villagers that as the name of defendant No.3 is still appearing in revenue record of the suit property, so taking disadvantage of it, defendant No.3 is trying to alienate the suit property or trying to create third party interest in it and he is about to take forcible possession of the suit property. So from this cause of action or denial of right suit appears to be very well within limitation.

11. Admittedly, before execution of the alleged sale-deed no prior permission of Collector was obtained. Therefore, as observed by the Hon'ble their Lordship in supra cited ***P Gopirathnam and 4 others*** case decision the sale-deed is required to be held as null and void. Whether on the basis of such defective sale-deed he can be declared owner or not is the question to be determined.

12. May it be so in case in hand, the plaintiff is claiming possession over the suit property on the basis of this sale-deed and he is further claiming relief of declaration that he is in possession of the suit property on the basis of this sale-deed and claiming injunction for protection of this possession. He is further claiming injunction and praying to restrain defendant No.3 for alienating or creating third party interest in the suit property. So prima-facie induction of the plaintiff in the suit property appears to be lawful i.e. on the basis of some documents. Said document is legal or not are the questions which are to be decided after taking evidence

from both sides. Moreover, it is also settled principle of law that even a trespasser or the person who is inducted in the possession of the property on the basis of some documents or is in legal possession can protect his possession against its true owner as well and even true owner can not evict him from the property without following due process of law. So suit for injunction for protection of possession from unlawful eviction is very well tenable.

13. Moreover, limitation for filing suit will be from obstruction and interference in possession or denial of right or possession. It is contention of the plaintiff that denial of title, possession and obstruction had taken place on 01/11/2023, while suit has been filed on 08/11/2023 i.e. within one month. So prima-facie suit appears to be within limitation and it can not be said that it is apparently barred by law of limitation. So in this particular case question of limitation can be held to be mixed question of law and facts and can not be decided at this stage without evidence from both sides.

14. As far as the objection that suit property being grant land, so suit is not tenable in Civil Court as per Section 24 of the said Act is concerned, the claim of the plaintiff does not come in purview of any question which is required to be settled, decided or dealt with under the Maharashtra Project Affected Persons Rehabilitation Act, 1999. So in my view this Court has jurisdiction to try and entertain present suit and it can not be said to be barred by Section 24 of the said Act. Hence, in view of this discussion, I pass following order :-

ORDER

Application (Exh. 21) is hereby rejected.

Date : 07/10/2024
Sangli.

(Vibha P. Gaikwad)
2nd Civil Judge, Sr. Division, Sangli.