

order below Exhibit 26 in Special C. S. No. 7/2018**CNR : MHSN05-000008-2018****(Krishnat Patil v/s. Raunak Patil)****Application under Order VII, Rule 11 of C.P.C.**

This is an application filed by defendant on the ground that present suit is barred by limitation, plaintiff does not disclose cause of action, therefore, not tenable.

2. It is the case of defendant that, plaintiff has challenged the registered sale-deed dated 03.05.2012 by filing present suit on 01.01.2018. Plaintiff shows that plaintiff has knowledge of sale-deed since its registration. The contents in plaintiff are sufficient to show knowledge of sale-deed to plaintiff. From the date of knowledge, suit is not within limitation. The contents in plaintiff also shows that, it does not disclose cause of action for the reliefs sought by the plaintiff against defendant. Therefore, on this ground plaintiff required to be rejected as per Order VII, Rule 11 of Code of Civil Procedure. Hence the application.

3. Plaintiff contesting the application filed his say at Exh. 29. His case is that, though the sale-deed challenged by plaintiff is registered on 03.05.2012, plaintiff came to know about fraudulent act as well as forgery committed by defendant on 30.03.2016, when charge-sheet was filed against defendant in Regular Criminal Case No. 55/2016. After that plaintiff has filed the present suit, which is well within limitation from the date of

knowledge of fraudulent document. Therefore, the application is not tenable.

4. It is further case of plaintiff that, plaintiff has claimed injunction and declaration against defendant. He has clearly mentioned cause of action arose for filing suit in para 6 of the plaint. Therefore, application is not tenable. Hence prayed for rejection of application.

5. Points that arise for my determination and my findings thereon for the reasons stated below are as under:

<u>POINTS</u>	<u>FINDINGS</u>
01. Whether application under Order VII, Rule 11 of C.P.C. is tenable.	.. In the negative.
02. What order?	.. As per final order.

REASONS

6. Heard both Ld. advocates.

POINT NO. 1 :

7. It is submission of Ld. advocate for defendant that, contents in plaint shows that plaintiff has knowledge about the registered sale-deed since 2012. The contents in plaint clearly shows that, from the date of knowledge to plaintiff, suit is not within three years, therefore, it is barred by limitation. Hence plaint is liable to be rejected.

8. It is also submission of Ld. advocate for defendant that, cause of action for filing suit for declaration is not disclosed in plaint. Therefore, on that ground also suit is not tenable. Thus, it is necessary to reject the plaint. To support his submission he relied upon Sarjerao Dhondiba Sarode v. Kamal Kerubhau Pachange [2018(5) Mh.L.J. 323], in which their Lordships have been held that :

“21. Here in the case, therefore, it is necessary to see whether the meaningful reading of the plaint discloses that he plaintiffs in this suit have the right to relief against the defendants and the cause of action, as given by the plaintiffs is real cause of action or it is merely a illusory cause of action.”

9. Ld. advocate for defendant also relied upon Sundeeep Polymers Pvt. Ltd. v. Maharashtra State Electricity Distribution Co. Ltd. [AIR 2010 (NOC) (Supp) 260 (BOM.)(Nagpur Bench)], in which their Lordships have been held that :

“10. I have carefully considered the rival contentions. There can be no doubt that if a suit is on the face of it barred by limitation it can be rejected under Order VII, Rule 11(d) of the Code. In such a case it is not necessary to push the parties to trial merely because limitation is mixed question of fact and law. But it does not follow that the objections of the defendant to the date shown in the plaint as the date of accrual of cause of action can be looked into at that stage. The question whether the suit is within limitation or not would have to be considered by the Court for the purpose of application for rejection of plaint only on the basis of averments in the plaint. Therefore, it cannot be said that the learned trial Judge erred in refusing to reject the plaint at the threshold. The impugned order, therefore, does not call for any interference.”

10. Ld. advocate for defendant also relied upon Foreshore Cooperative Housing Society ltd. Bombay v. Praveen De. Desai [AIR 2009 (NOC) 902 (BOM)], in which same ration has been laid down by Hon'ble High Court.

11. Ld. advocate for defendant also relied upon M/s. Lakshminagar Housing Welfare Association v. Syed Sami & Ors. [AIR 2010 A.P. 178]. But the said ruling appears to be in respect of deficit court fee stamp. In the present application defendant has not challenged the suit on the ground of deficit court fee stamp. No averment is made in the application in respect of deficit court fee. Therefore, this ruling is not applicable to the present application.

12. On the other hand, Ld. advocate for plaintiff has submitted that plaintiff has filed the present suit for declaration on the ground that, he came to know about fraud played by defendant in the year 2016 after filing charge-sheet against defendant bearing R.C.C. NO. 55/2016. Thus, present suit filed by plaintiff in 2018 after filing charge-sheet in R.C.C. No. 55/2016 is within three years, which is well within limitation. It is further submission of Ld. advocate for plaintiff that, the allegations in plaint shows that the question of limitation is mixed question of law and fact. Therefore, it cannot be decided at this stage and plaint cannot be rejected under Order VII, Rule 11 of C.P.C. It is further submission of Ld. advocate for plaintiff

that, para 6 of the plaint clearly discloses cause of action, therefore, on that ground also plaint cannot be rejected. To support his submission he relied upon Sau. Dipali Himmat Meherwal & anr. Vs. Shaikh Nazir Mohammad Nasir & Ors. [2018(2) ALL MR 1], wherein their Lordships have been held that :

“11. Upon a meaningful reading of the plaint in its entirety, it is difficult to accept the contention that the Suit appears, from the statement in the plaint, to be barred by any law. All that can be stated at this stage is that the issue of limitation or res judicata raised by the applicants may be arguable defences. However, this is far from concluding that the Suit, on the basis of statement in the plaint, is found to be barred by law.”

“15. At this stage, it is too premature to say whether the allegations of fraud are well founded. However, upon reading of the plaint, it cannot be denied that such allegations are made. Fraud is said to vitiate even the most solemn of proceedings.”

13. Ld. advocate for plaintiff also relied upon Chhotanben and another v. Kiritbhai Jalkrushnabhai Thakkar and others [AIR 2018 SUPREME COURT 2447], wherein their Lordships have been held that:

“16. In the present case, we find that the appellants (plaintiffs) have asserted that the suit was filed immediately after getting knowledge about the fraudulent sale deed executed by original defendant Nos. 1 and 2 by keeping them in the dark about such execution and within two days from the refusal by the original defendant Nos. 1 and 2 to refrain from obstructing the peaceful enjoyment of use and possession of the ancestral property of the appellants. We affirm the view taken by the Trial Court

that the issue regarding the suit being barred by limitation in the facts of the present case, is a triable issue and for which reason the plaint cannot be rejected at the threshold in exercise of the power under Order VII Rule 11(d).”

14. No doubt, as submitted by Ld. advocate for defendant and as observed by their Lordships in the rulings referred by him, if contents in plaint, on plain reading, discloses that question of limitation is pure question of law, court can reject the plaint at initial stage as per Order VII, Rule 11 of C.P.C. But in the present case, as submitted by Ld. advocate for plaintiff, on plain reading of plaint, i.e. para 2, which clearly shows that, plaintiff has challenged the sale-deed dated 03.05.2012 on the ground that the I.D. proof attached with sale-deed is bogus, forged, also on the ground that at the time of execution of deed, executant Sitabai Raghunath Kulkarni was actually not present before Sub-Registrar Office. It has also been disclosed by plaint in the plaint that, plaintiff came to know about this fraudulent act of defendant when police has filed charge-sheet against defendant in R.C.C. No. 55/2015.

15. No doubt, as submitted by Ld. advocate for defendant, in respect of registered document, as per section 3 of the Transfer of Property Act, registration itself is notice to public at large. But, if the registered document is challenged on serious grounds, like forged document, false personation, etc., mere its registration cannot be said to be knowledge as well as starting point of limitation. In the present case also, contents in plaint

clearly shows that, document in dispute is challenged by plaintiff on serious grounds. Plaintiff has clearly mentioned that he came to know about fraudulent act of defendant after filing charge-sheet bearing R.C.C. No. 55/2016 in the year 2016. The contents in plaint clearly shows that, in the present case question of limitation is not pure question of law. On the contrary based on serious allegations, it is mixed question of law and fact. In such situation, in the present case, it is not proper to reject the plaint holding that suit is not within limitation.

16. So far as cause of action is concerned, no doubt, as submitted by Ld. advocate for defendant and as observed by their Lordships, the contents in plaint, in respect of cause of action must be truthful contents and should not be imaginary or based on illusion. But in the present case, the contents in para 1, 2 as well as contents in para 6 of the plaint clearly shows that plaintiff is claiming his possession over the suit property since his fore-fathers i.e. since 1920. No doubt, as submitted by Ld. advocate for defendant, there is no specific pleading in respect of cause of action for filing suit for declaration. But present suit is not only for declaration. Plaintiff has claimed injunction on the basis of his lawful possession as well as for declaration. Therefore, it cannot be said that, in the present case the cause of action mentioned by plaintiff is illusory or based on imaginations. On the contrary, as submitted by Ld. advocate for plaintiff, the averments in plaint, on plain reading, on the face of

it, shows that plaintiff has disclosed cause of action for filing present suit. Therefore, on that ground also plaint cannot be rejected.

17. Ld. advocate for defendant also submitted about deficit court fee. But there is no pleading in application in respect of deficit court fee. Therefore, without giving opportunity to plaintiff said point cannot be discussed and decided in this application.

18. As discussed above, on plain reading of plaint, it appears that question of limitation is mixed question of law and fact. The contents in plaint clearly shows that, plaintiff has disclosed cause of action for filing present suit. Therefore, application filed by defendant under Order VII Rule 11 of C.P.C. is not tenable. Hence I answer point No. 1 in the negative.

POINT NO. 2 :

19. In view of my finding to point No. 1 in the negative, application deserves to be rejected. Hence I pass following order:

ORDER

1. Application is rejected.
2. Cost in cause.

Islampur
Date:-16/01/2019

Sd/xxx
(Smt. S. R. Patil)
Civil Judge Sr. Dn., Islampur