

MHSO070003182018



Order passed below Exh. 55 in RCS No. 253/2018

1. This is an application filed by the Defendants No. 3 & 4 for rejection of plaint under Order VII Rule 11(d) of the Civil Procedure Code (in short “CPC”). The Plaintiff has filed say at Exh. 61. Heard Advocates for both sides. Perused the record.
2. It is submitted by Defendants that, present suit is filed for declaration that, order passed by Tahsildar in Case No. 12/1998 as per Sec. 143 of the Maharashtra Land Revenue code dated 30/03/1999 is not binding on him. Defendants have denied all the allegations and also objected that, present suit is not within limitation. The suit is not filed within specific period of limitation and therefore, it is not maintainable. Therefore, it is prayed to reject the plaint being barred by limitation.
3. The Plaintiff objected the application stating that, the application is not maintainable. As per order passed in Case No. 12/1998 the road ordered to be prepared was never prepared and it never came into existence. The Plaintiff was not party to the proceeding in the year 1998. The Defendants started executing order of Tahsildar in May 2018. Therefore, when Plaintiff came to know about order in June 2018, present suit is filed. It is filed within limitation. Hence, he prayed to reject the application.
4. It is settled principle of law that, while considering

application under Order 7 Rule 11 of the CPC only allegations made in the plaint are to be considered. Statements made in the application or written statement can not be considered. While arguing present application both parties have heavily relied on various documents and case laws. Those are discussed at the relevant point of time. It is the case of Defendants No. 3 & 4 that as per Sec. 143(4) Maharashtra Land Revenue Code, order passed by Tahsildar can be challenged within a period of one year. The order under challenge is passed on 30/03/1999. Present suit is filed in the year 2018. Therefore, this suit is not filed within limitation. The Advocate for the Defendants also argued and relied on documents and photographs.

5. Vide Exh. 67, Defendants have filed two photographs and photocopy of statement given by father of the Plaintiff in the original proceeding of SR 12/1998. It was submitted by the father of the Plaintiff that, to avoid greater loss to him he has agreed to prepare road from his land. Ld. Advocate further relied on photographs filed vide Exh.71 and 67/2. He pointed out that the road is in existence as seen from photographs. He further relied on report of Court Commissioner report, appointed in Miscellaneous Civil Appeal 68/2022. It is brought to my attention that, Court Commissioner has observed the existence of road of 5 ft. wide road. However, it is not convenient for transport of vehicles. Therefore, the Advocate for the Defendants argued that, the road is in existence on the suit property since the year 1999. The Plaintiff has filed suit beyond the period of limitation.

6. The Advocate for the Plaintiff while arguing relied on Mutation Entry No. 1340 which states that, the suit property Gat No. 282 and 243/A/2 has been transferred in the name of Plaintiff No.1 & 2 respectively in the year 1997 by his father. Therefore, when proceeding before Tahsildar was filed in the year 1998, the father of the Plaintiff was no longer owner of Gat No. 282 & 243/A/2. Thus, the Plaintiff who was owner of these properties in the year 1998 was not made party to the proceeding before Tahsildar. Therefore, the decision given by Tahsildar is not binding upon him. As stated in the plaint, the cause of action arose in the year 2018 when Defendants started creating the road. Plaintiff made complaint to police. The Defendants have given statement before police that, they have decided to create road amicably. Therefore, Advocate for the Plaintiff interpreted and argued that prior to this incidence i.e. June 2018, no road was in existence on the suit property. Hence, Defendants can not claim the existence of road prior to 2018. The Advocate for Plaintiff also relied on following 03 judgments of Hon'ble Bombay High Court :-

1. **Sharad Sitaramji Shende & others Vs. Nilesh Subhshandaji Katariya & others 2023 MhLJ 785.** It is held that, whether the suit is barred by law of limitation, a bare reading of the plaint can not demonstrate a question being necessarily a mixed question of facts and law. It requires parties to lead evidence and therefore it can not be ascertained at the stage of adjudication of application under Order VII Rule 11 of the CPC.
2. **Santosh Vs. Jagatram & another 2010(4) MhLJ 261.** It is held that, when a decree is obtained by fraud, it is nothing but a nullity. A

fraud puts to an end to everything and therefore suit challenging such decree is not barred by limitation.

3. Harishchandra Pundalik Ughade & another Vs. State of Maharashtra & others, 2013(6)MhLJ 820. It is held that, to enforce the legal right on the easementary act, the party would have to approach the Civil Court having competent jurisdiction to get legal rights declared. Rights which are available under Maharashtra Land Revenue Code are statutory available provisional rights which holder of the agricultural land may claim as provisional arrangement until the real controversy between the parties is conclusively decided by the competent Civil Court.

07. The ratio cited in judgment of Harishchandra Ughade (supra) is of no relevance for the adjudication of this application. Conjoint reading of ratio laid down in case Sharad Shende and Santosh (both supra) show that the point of limitation where it is mixed question of facts and law, it can not be decided by barely reading only allegations in the plaint. As discussed above to support his pleadings, the Plaintiff and Defendants No. 3 & 4 have relied on various documents and photographs. The bare reading of the plaint can not cover the real question of controversy. Plaintiff has stated that he was not party to the proceeding which is under challenge, the road was not in existence prior to June 2018, the cause of action arose in June 2018 and trees mentioned in order under challenge dated 30/03/1999 are still in existence and therefore, road can not be in existence.

08. To consider all these facts, various documents and statements given by parties before other authorities and in other proceedings and, various photographs are required to be perused. Various facts are required to be taken into consideration which are argued by both parties. On the background of this discussion, it is clear that the present question of limitation can not be decided in isolation only by considering pleadings in the plaint. It requires combined consideration of facts and the law. Whether the suit challenging order passed by Tahsildar in SR-12/1998 dated 30.03.1999 is barred by limitation or it is in accordance with the cause of action mentioned in the plaint or not, can be decided only upon merits. Therefore, this application under Order VII Rule 11 of the CPC is a mixed question of law and facts and it can not be adjudicated by bare reading of the plaint. Thus, the application can not be adjudicated in its present form. The plaint is cannot be rejected on the basis of this application at this stage. For the reasons mentioned above, following order is passed:

ORDER

1. The application Exh. 55 is rejected.
2. No order as to costs.

Pandharpur.
Date: 08.08.2024

(S. S. Raul)
2nd Jt. Civil Judge Junior Division,
Pandharpur.

CERTIFICATE

I affirm that the contents of this PDF file Judgment/Order are same word to word as per the original Judgment/Order.

Name of the Stenographer	-	A.B. Sandrok
Court	-	2 nd Jt. CJD & JMFC, Pandharpur.
Date of Judgment/Order	-	08.08.2024
Judgment/Order signed by the Presiding Officer on	-	12.08.2024
Judgment/Order uploaded on	-	12.08.2024