

Special Civil Suit No.108/2020
Pradip Rakale Versus
Ajit Rakale etc.
CNRNOMHSO100005172020

ORDER BELOW EXHIBIT NO.31

(Dated September 04, 2023)

1. This application under Order 7, Rule 11A to D of Code of Civil Procedure.

2. In short it is application plaintiff has submitted the suit for partition and separate possession and declaration and perpetual injunction. In fact, father of plaintiff Chandrakant Vitthal Rakale sold his share to defendant No.2 on 06/12/2013 of the suit property. Therefore, Chandrakant Rakale has no concern with the suit property. Chandrakant Rakale died on 09/07/2018. till his date the sale deed dated 06/12/2013 was not objected. The plaintiff has not claimed in the suit that, sale deed dated 06/12/2013 be declared as void and not binding on his share. Therefore, defendant No.2 is absolute owner of suit property. As sale deed dated 06/12/2013 is not challenged, therefore, the plaintiff has no cause of action to file the suit. In plaint there is averment regarding sale deed dated 30/03/2016 and construction dated 19/01/2020. Therefore, the suit is not within limitation. The plaintiff has valued the suit on basis of sale deed. In the year 2020 market value is more than 2 and ½ crores rupees of the suit property. Therefore, the suit is under valued barred by limitation. Hence, plaint be rejected.

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3. The plaintiff has submitted his say below Exhibit No.65. The plaintiff has pleaded that defendants No.1 and 2 are making construction over the suit property for joint family. Therefore, the plaintiff visited the suit property on 19/01/2020. Thereon he came to knowledge that defendant No.10 is the owner of the suit property. The plaintiff has made inquiry with the tenant. Thereon he came to knowledge about the sale deed. Therefore, the suit is within limitation. The suit is valued on the basis of sale deed executed in favour of defendant No.10 dated 30/07/2016. The plaintiff has valued the suit and paid court fees to the extent of his share. Therefore, the application may be rejected.

4. I have heard learned advocates of both sides.

5. To decide the application it is necessary to peruse the averment made in the plaint. The suit property as per property card which are submitted with list of documents Exhibit No.4 is non-agricultural land. The plaintiff has claimed a relief of partition and separate possession to the extent of 1/4th share in the suit property. As per Maharashtra Suits Valuation Rules, Rule No.2, in suits for possession of lands, houses and gardens mentioned in paragraph V in section 6 of Bombay Court Fees Act for the purpose of jurisdiction the value of the property shall be determined as follows:- Where the subject matter is house or garden, according to the market value of the house or garden as the case may be.

6. As per averment made in the plaint the plaintiff

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visited suit property thereon he came to knowledge that construction over it is going on. So, it shows that, for the purpose of residential purpose the suit property is used. When it is used for residential purpose then it becomes a house property. Therefore, the plaintiff has to value the suit for the purpose of jurisdiction and court fees on market value on the date of the suit. But, the plaintiff has not valued the suit on the basis of market value. The suit has submitted on 04th December, 2020.

7. The learned advocate of defendant submits that, the plaintiff has challenged the sale deed, so the plaintiff has to pay court fees on the valuation of the sale deed. I have perused the sale deed bearing No.1894, dated 30/03/2016, which market value of sale deed is Rs.1 crore 30 lacks. One crore 30 lacks the plaintiff has paid court fees to the extent of his share.

8. As per plaint para No.7, the plaintiff has valued the suit on 1 crore 30 lacks to the extent of his 1/4th share and thereon paid court fees. Learned advocate of defendant relied on **Sanjay Ramchandra Sendkar and others Versus Narayan Antu Zendge, 2023(2) All MR 647**, in which the Honourable Bombay High Court laid down the ration that where a declaration the effect that, the sale deed is void and it is not binding upon the plaintiff. Thus, must squarely fail within the purport of clause(ha). This ratio is more applicable to the present application. But, the plaintiff has valued the suit on the basis of market value mentioned in the sale deed.

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9. The learned advocate of the defendant submits that, the suit is not within limitation, therefore, it is barred by law. The learned advocate of defendant submits that, the sale deed dated 30/03/2016 is registered document. Therefore, the plaintiff has knowledge about execution of sale deed. Hence, period of limitation starts from 30/03/2016 for which he relied on **Suraj Lamp and Industries Private Limited Versus Director State of Hariyana. 2009 All SCR 2702**, in which the Honourable Apex Court laid down a ratio that registration of documents gives notice to the world that such a document has been executed. Fact of cited case and present case are different. The learned advocate of defendant relied on **Shri.Jayantilal Devji Shah (Haria) Vs. Mangesh Dasrath Gaikar & Othrs. 2018(4) ALL MR 326**, in which the Honourable Bombay High Court laid down a ratio that a period of limitation for a suit for specific performance would be three years from the date of refusal as no date of performance mentioned in agreement. The present suit is for partition and separate possession. As per averment made in the plaint the plaintiff came to knowledge about the disputed sale deed. When he came to knowledge that a sale deed is executed in favour of defendant No.10 on 19/01/2020. The Honourable Bombay High Court in case of **Altaf Fakir Baig and others vs. Goel Ganga Deve (IND) Pvt.Ltd., 2023(4)Mh.L.J. 658**, laid down a ratio that at para No.13 which I have re-produced as under :-

It is also clear from the Judgment of Apex Court in Salim D.Agboatwala and ors. vs. Shamalji Oddhavji Thakkar and ors. (Supra), that the

rejection of plaint under Order VII, Rule 11 of CPC is a drastic power conferred upon the Court to terminate the civil action at the threshold. Limitation is a mixed question of fact and law. Therefore, if there are averments in the plaint, that the facts giving right to cause of action only arose at a particular point of time, the Court has to accept the evidence at the stage of considering the application under Order VII, Rule 11 of CPC. It is settled law that it becomes a triable issue and when the Court is satisfied that plaint discloses real cause of action and not merely illusory cause of action drafted by clever drafting, the Court should be hesitant, and, infact, should refuse to terminate the civil action at the threshold.

10. This ratio is more applicable to the present suit because the suit is for partition and separate possession. So, the plaintiff has cause of action to file the present suit. Even though the sale deed which has been executed in favour of on 06/12/2013 in favour of Sanjay Shrinivas Rakale that does not create a bar to file the present suit for partition and separate possession.

11. As the plaintiff has not valued the suit on market value on the date of the suit on that count the plaint could not be rejected. However, time is required to be given to the plaintiff to correct the valuation and pay court fees thereon.

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Hence, in the result, I pass the following order :

ORDER

The plaintiff is directed to value the suit on the basis of market value on the suit property on the date of suit for the purpose of jurisdiction and payment of court fees and pay court fees according thereon within 15 days from today.

September 04, 2023.

Sd/-
(U.V.Joshi)
Civil Judge, Senior Division, Malshiras.