

**Order passed below Exh. 31 in R.C.S. No. 168/2021**

Defendant has filed this application for rejection of plaint, under Order VII, Rule 11(a) & (d) of the Code of Civil Procedure.

**2.** Defendant has contended that, plaintiff has filed this suit for partition. However, plaintiff in his plaint clearly admitted the execution of partition held in the year 1978. Therefore now plaintiff can not claim partial partition as it is prohibited by provisions of Hindu Law.

**3.** Defendant has further specifically contended that plaintiff has filed this suit after 43 years of execution of previous partition. Therefore suit is barred by law of limitation. The cause of action for filing this suit mentioned in the plaint, is related with land acquisition and compensation amount of Gat No. 276/1/B. However that property is not subject matter of present suit. So also plaintiff has challenged said acquisition process before competent authority. Therefore no cause of action arise to plaintiff for filing present suit. Therefore, the plaint is liable to be rejected under Order VII Rule 11(a) and (d) of the C.P.C.

**4.** Plaintiff has resisted the application by filing his say at Exh.38 . It is his contention that, the application is false and frivolous. In the plaint, he has specifically mentioned cause of action for filing suit. Suit is not barred by any law. Therefore application deserves to be rejected.

**5.** Plaintiff has also stated that the cause of action for filing this suit is mentioned in plaint and therefore the suit cannot be

said to be barred by any Law. Even otherwise, the question of suit being barred by law of limitation is a mixed question of Law and Fact. Plaintiff has therefore prayed for rejection of the application.

6. Perused the record. In support of his contention, the plaintiff has placed his reliance upon the following case laws -

1. The Church of Christ Charitable Trust and educational Charitable Society rep.by its Chairman vs. Ponniamman Educational Trust rep. By its Chairperson/Managingtrustee, AIR 2012 SC 3912, herein the Hon'ble Supreme Court has held that -

*“For the purposes of deciding an application under Order 7 Rule 11 of the Code of Civil Procedure has to be decided only on basis of averments made in plaint-Plea taken in the written statement are immaterial.*

*Cause of action is bundle of facts which taken with law applicable to them gives plaintiff right to relief against defendant.”*

2. Bhauram Vs. Janak Singh and others AIR 2012SC 3912 , wherein the Hon'ble Supreme Court has held that,

*“Order 7 Rule 11 of the Code of Civil Procedure has to be on basis of averments made in plaint-Plea taken in the written statement are irrelevant.”*

3. Ponnala Laxshmaiah Vs. Kommuri Pratap Reddy and ors AIR 2012 SC 2638 , wherein the Hon'ble Supreme Court has held that,,

Civil P.C. (1908) O.7 R.11 - *“Whether discloses cause of action- Question ought to e decided bytaking averment in totally and by assuming them to be factually correct.”*

4. Boshan Developers Pvt. Ltd Vs. Comunidade of Bordem Thr.Its Special

Attorney and others 2016(1) Mh.L.J.874, wherein it is held that,

Civil P.C. (1908) O.7 R.11 (d) and Limitation Act Section 5 - Rejection of plaint on ground of limitation- not permissible- The question of limitation would require examination of facts and would be adisputed qustio which can be gone into the trial.No exception can be taken to the finding of the District Judge while dismissng the application that the suit can not be dismissed at the threshold as being barred by limitation.”

**7.** It can be thus seen that defendant has prayed for rejection of the plaint on two counts. Defendant has prayed for rejection of plaint under O.7 R.11(a) of the C.P.C., as it does not disclose the cause of action. It is also defendant's contention that the present plaint is liable to be rejected under O.7 R.11(d) of the C.P.C., being it barred by Law of Limitation.

**8.** So far as, prayer of defendant no.1 to 16 for rejection of plaint under O.7 R.11(a) of the C.P.C., is concerned, they have contended in their application that the suit is filed without any reason and the cause of action mentioned in the plaint for filing present suit is not concern with suit properties. Therefore, according to defendants, for filing the present suit no cause of action arose and therefore the plaint is liable to be rejected under O.7 R.11(a) of the C.P.C.

**9.** However, for the purpose of deciding an application under O.7 R.11(a) to (d), the averments in the plaint are only needs to be considered and the plea taken in the written statement is wholly irrelevant. It is further contended that plaintiff has admitted previous execution of partition in the year 1978. It is also admitted by plaintiff that property Gat no. 119 is sold by plaintiff. Gat no. 303 and 308 came to the share of brother of plaintiff i.e. father of defendant no. 17 to 19. Gat no. 276 is forest property. However, defendant's plea in the written statement in respect of alleged previous partition is irrelevant for the purpose of deciding this application specifically when plaintiff has categorily challenged and denied the said partition on account of unjust share, improper discription of suit properties etc. Thus, though execution of partition is admitted by plaitiff, the trial and evidence regarding previous execution of parttion and actual existance of properties

as per that partition is necessary. Hence, the said contention of defendant cannot be considered at this stage.

**10.** Further, defendant has specifically contended that the cause of action stated in the plaint for filing the present suit is false and frivolous. In this background, it is to be noted that the ground for rejection of plaint is failure to disclose a cause of action and not that there is no cause of action for the suit. There is a difference between the non disclosure of cause of action in the plaint and the absence of cause of action for the suit.

**11.** On perusal of plaint it appears that, plaintiff's case is that defendant no.5 as power of attorney holder of other defendants trying to sellout the suit proeprty no. 1-a even when they are having knowledge that said proeprty is in possession of plaintiff. When plaintiff came to know about the said fact he asked to defendant no. 5 but in vain.

**12.** Thus, it can be seen that in para no.9 of the plaint, the plaintiff has averred that the cause of action for filing the present suit has occurred before 45 days of date of suit, when the defendant no. 1 to 16 without consent of plaintiff received compensation amount against land acquisition and now trying to sell out remaining portion of Gat no. 276/1A .

**13.** It thus appears that, plaintiff has specifically disclosed, when the cause of action arose for filing the present suit. He has disclosed a clear right to sue. There is no cause of action for the suit is not the same, as to say, the plaint does not disclose any cause of action. If the plaint discloses cause of action, the correctness or otherwise of the allegations constituting the cause

of action is beyond the purview of O.7 R.11 Clause (a) of the C.P.C. and therefore the defendant's contention that cause of action disclosed by the plaintiff is false cannot be gone into merit at this stage. The rejection of the plaint at the threshold entails very serious consequences. Hence, by looking at the averments contained in the plaint, it can be said that the plaint does disclose cause of action for filing the present suit. I, thus, do not find any substance in the contention of defendant that, the plaint does not disclose cause of action.

**14.** The defendant has also come out with a case that, plaintiff admits the execution of partition executed in the year 1978. But, the present suit is filed after 43 years. Defendant also contends that it is also plaintiff's case that properties are already partitioned. Plaintiff already sold out Gat No. 119. Gat no. 303 and 308 are came to the share of father of defendant no. 17 to 19. Therefore now at this belate stage plaintiff can not claim for partition again. It is well settled that, for the purpose of determination of the question, as to whether, the plaint is liable to be rejected under O.7 R.11(d) of the C.P.C., the court has to confine to the allegation in the plaint and in the documents produced and relied upon by the plaintiff.

**15.** Thus, considering these aspects appeared on record, it can be said that, the issue as to whether there is already execution of partition and now plaintiff has no right to claim partition, is a debatable and arguable issue. At this stage, it is too premature to say whether the said allegations of knowledge of previous partitions and various share executed in its furtherance, are well founded. However, the fact remains that, such allegations are made.

Defendant is disputing the said allegations of plaintiff by contending that, plaintiff has knowledge about the previous partition and he has obtained fruits of said partition by selling the property i.e. Gat No .119. In these circumstances, it can be very well said that, the very issue of plaintiff's knowledge of execution of partition is depending upon the facts which are disputed and requiring trial and therefore in this case it can be said that, issue of limitation is a mixed question of Law and Facts. It can be thus said that, factum of suit being barred by limitation, is in this case a triable issue. Whether, there is delay of almost 43 years in filing this suit or not and whether it is barred by law of Limitation or not, is a subject matter of trial, which can be decided only after taking the evidence. In this case, merely looking to the pleadings in the plaint, it does not come out that the suit is barred by law of limitation.

**16.** All that can be stated at this stage is that, the issue of limitation raised by the defendants may be arguable defences. However, it cannot be concluded that the suit on the basis of statement in the plaint is found to be barred by Law of Limitation. In this case, the issue of limitation at the highest can be said to be a mixed issue of law and facts, wherein, the evidence will be necessary for determination of the said issue of limitation in the facts & circumstances of this case. The plaintiff cannot be non suited on the said ground alone.

**17.** Therefore, in view of the reasons stated above, defendant has failed to make out the case that, plaint is required to be rejected for either failure to disclose any cause of action or that suit appears from the statement in the plaint to be barred by the

Law of Limitation. In these facts and circumstances, the application is liable to be rejected. Hence, I proceed to pass following order.

**ORDER**

1. Application Exh.31 is rejected.
2. Costs in cause.

Date : 18/08/2023.

( P.S.Govekar )  
2<sup>nd</sup> Jt. Civil Judge J.D., Mohol.