

MHST – 0500 - 0760 - 2024

**IN THE COURT OF CIVIL JUDGE SENIOR DIVISION, KARAD
ORDER BELOW EXH.14 IN Civ. M.A. No.80/2024**

1. Smt. Anandibai Dattu Shinde & Ors. ...Applicants.

Versus

1. Smt. Subhadra Sahdev Marathe & Anr. ...Respondents.

Advocate Mr. C. J. Gaikwad for the applicants.

Advocate Mr. B. M. Panskar for the respondent No.1.

Coram : S. B. Todkar,
C.J.S.D. Karad.
Date : 01/02/2025

ORAL ORDER :

The respondent No.1 has filed present application for rejection of applicant u/O. VII Rule 11(d) of The Code of Civil Procedure, 1908.

02. Perused the application and reply at Exh.16. Heard Ld. Advocate for both side at length.

03. Considering the rival contentions in the application and replay, following points arises for my determination, to which I have recorded my findings with reasons thereon as under :

Points :

Findings :

- | | |
|--|-------------------------|
| 1. Whether application / plaint is liable to be rejected / dismissed ? | ... In the negative. |
| 2. What order ? | ... As per final order. |

REASONS

As to Points No.1 & 2 :

04. It is the contentions of the respondent No.1 that the applicants have filed the present application for heirship certificate under the provisions of Bombay Regulation Act, 1827. The applicants have made S.D.O. Patan as respondent No.2. Along with main application the applicants have filed an application for temporary

injunction and sought an injunction not to pay the sanctioned amount to respondent No.1 under Maharashtra Project Affected Person Rehabilitation Act. The respondent No.1 and her husband Sahdev Mhatara Marathe lived in the project affected area. At that time, Wang-Marathwadi project was announced. At that time, the separate account of respondent No.1 and her husband recorded in the compilation list. Accordingly, the Competent Authority after completing all the legal formalities, approved the amount in the name of respondent No.1's husband Sahdev Mhatara Marathe as the individual account holder. The sanctioned amount is deposited in the name of respondent No.1 with the S.D.O. Patan, as the legal heir of respondent No.1 as his wife. The applicants have raised objection to it. On this, S.D.O. Patan has closed the entire case for order considering arguments of both sides. In such situation, the heirship certificate and temporary injunction application have been presented by the applicants without legal provisions to prevent the respondent No.1 from receiving the sanctioned amount. Moreover, as per Section 22 of the Maharashtra Project Affected Persons Rehabilitation Act, 1986 - No Civil Court (As per Section 28 chapter 5 of Maharashtra Project Affected Persons Rehabilitation Act, 1999, on the commencement of this Act, the Maharashtra Project Affected Persons Rehabilitation Act, 1986 shall stand repealed : provided). As per Section 24 of Maharashtra Project Affected Persons Rehabilitation Act, 1999 – No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the project authority, Collector, Commissioner or the State Government. So also as per Section 63 of the Land Acquisition Act, 2013 – No Civil Court (other than High Court under article 226 or 227 of the

Constitution or the Supreme Court) shall have jurisdiction to entertain any dispute relating to land acquisition in respect of which the Collector or the Authority is empowered by or under this Act, and no injunction shall be granted by any court in respect of any such matter. During course of argument the Ld. Advocate for the respondent No.1 submitted that the cause of action shown in the original application is itself sufficient to come to conclusion that the relief claimed/ application filed by the applicants is not within limitation therefore, original application is liable to be rejected on the ground that the claim of the applicants is barred by law of limitation. On the abovesaid grounds respondent No.1 prayed for rejection of the original application. Hence the application.

05. The applicants have filed their reply at Exh.16 and strongly opposed the present application on the following grounds. The contentions raised by the respondent No.1 in the present application are false and are made only for to prolong the hearing of the original application. In such a situation, the S.D.O. Patan in the case of rehabilitation पुर्नवसन/ का.वि./६३८/२०२३ has started the process of giving the acquisition amount of property of the acquired land to the respondent No.1. The hearing of the said case was schedule on 21/06/2024. In such situation S.D.O., Patan verbally told the applicants to bring the legal heirship certificate as they are heirs of Mhatara Nagu Marathe. This Court has no jurisdiction to decide the relief sought by the respondent No.1 in the present application. The applicants have not challenged the award. The matter related to this issue is already decided by S.D.O., Patan in proceeding No. पुर्नव/वांग म/ रो. रक्कम/ कावि. ३१५-२०१९ on 03/07/2019. While deciding the said proceeding the S.D.O. has observed that it reveals that there is dispute between the applicants and respondent on account of heirship therefore, it is

necessary to settle the said dispute by the parties from Civil Court. The relevant facts which need to be looked into for deciding the application are the averments of the original application only. The averments in the written statement/ say as well as the contentions of the respondent No.1 are wholly immaterial while considering the prayer of respondent No.1 for rejection of original application. Therefore, without giving an opportunity to the applicants the original application can not be rejected summarily on the ground of limitation. Therefore, the original application filed by the applicants is well within limitation. On the abovesaid grounds the applicants have prayed for rejection of the application with compensatory costs.

06. At the time of argument on this application the Ld. Advocate for the applicants has placed his reliance on the following decision and Section :-

a) **Shakti Bhog Foods Industries Ltd. Versus Central Bank of India & Anr.** reported in 2011(1)Bom.C.R. 547, wherein Hon'ble Apex Court in paragraph No.11 it is observed that,

“9. A perusal of O.7, R.11 C.P.C makes it clear that the relevant facts which need to be looked into the deciding an application thereunder are the averments in the plaint. The trial Court can exercise power under O.7, R.11 CPC at any stage of the suit – before registering the plaint or after issuing summons to defendant at any time before conclusion of the trial. For the purpose of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, averments in the plaint are germane; the pleas taken by the defendants in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under O.7, R.11 of CPC cannot be but be procedural irregularity touching the exercise of jurisdiction by the Trial Court.

It is clear that in order to consider Order 7, Rule 11 the Court has to look into the averments in the plaint and the

same can be exercised by the Trial Court at any stage of suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinise the averments / pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At any stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averment. These principles have been reiterated in Raptakos Brett & Co. Ltd. Vs. Ganesh Property, (1998) 7 S.C.C. 184 and (Mayar (H.K.)Ltd. Vs. Vessel M.V. Fortune Express), (2006)3 S.C.C.100.”

b) As per the provisions of **Section 76** of The Right to Fair Compensation And Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 - When the amount of compensation has been settled, if any dispute arises as to the apportionment of the same or any part thereof, or as to the person to whom the same or any part thereof is payable, the Collector may refer such dispute to the authority.

07. On the other hand, the Ld. Advocate for the respondent No.1 has placed his reliance on the following decision and Section :-

a) **Ajay Kumar Singh @ Ajay Kr. Singh Vs. Smt. Soni Shahi**, decided on 9th May 2023 in Civil Misc. jurisdiction No. 1468 of 2019, wherein Hon’ble Patana High Court in paragraph No.22 and 24 it is observed that,

“**22.** The Division Bench of Allahabad High Court in the case of Umesh Chandra Saxena & Ors. Vs. Administrator General & Ors. reported in AIR 1999 All. 109 in para 46 agreed the observation of Single Judge who referred Section 141 CPC which provides that the procedure provided in the Code of Civil Procedure in regard to suits would be followed, as far as it can be made applicable, in all proceedings in any Court of Civil jurisdiction and he was of the opinion that the proceeding for grant of letter of administration was one in which the Court exercised its

Civil Jurisdiction and as such all regours of the Code of Civil Procedure would be applicable. Further referred Rule 39 of Chapter XXX of Allahabad High Court Rules to say that when te matter become contentious the application for letters of administration and wold be treated and registered as as suit and the petition was read as plaint and the objection as Patana High Court C.Misc. No.1468 of 2019 dt. 09/05/2023 written statement and, as such the testamentary suit was suit for all purposes under the Code of Civil Procedure and no exception could be taken to invocationof Order 7 Rule 11 CPC. ”

“24. From the aforesaid discussion of the observation made by High Courts and also on perusal of petition under Section 22 (1) of the Act filed by the petitioner before the Court below in my view, the petition can be treated as plaint and the provision under Order 7 Rule 11 CPC is applicable in this case.”

b) As per provisions of **Section 141** of the Code of Civil Procedure, 1908- Miscellaneous proceedings :- The procedure providedin hthsi Code in regard to suit shall be followed as fara s it can be made applicable, in all proceedings in any Court of Civil jurisdiction.

In short, by relying this decision the Ld. Advocate for the respondent No.1 submitted that the original application filed by the applicants be treated as plaint as per Section 141 of the Code of Civil Procedure and the provisions under Order 7 Rule 11 of the C.P.C. be applicable to the application filed by respondent No.1 at Exh.14.

08. In reply to these decisions the Ld. Advocate for both the side submitted that the facts in the relied decisions, issues involved of the relied decisions and present matter in hand are totally distinct and therefore, the cited decisions are of no help to the respective parties.

09. This is an application filed by the defendants for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908. Therefore, I would like to reproduce the said provision before discussing the factual aspects. It runs as :-

11. Rejection of plaint - The plaint shall be

rejected in the following cases :-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;
- (c)
- (d) Where the suit appears from the statement in plaint to be barred by law;
- (e)....,
- (f)....,

10. On careful perusal of the above provision, it is clear that if the suit from the statements made in the plaint is barred by any law, then plaint is liable to be rejected.

11. It is settled position of law that, the plaint can be rejected under Order 7 Rule 11 CPC if the conditions enumerated in the said provisions are fulfilled. The powers under Order 7 Rule 11 can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averment in the plaint only. The averments of the plaint have to be read as a whole to find out whether the averment discloses a cause of action or whether the suit is barred by any law. The question whether the suit is barred by any law, would always depend upon the fact and circumstance of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are to be taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose any cause of action, the application for rejection of the plaint can be entertained and power under Order 7 Rule 11 can be exercised. If

clever drafting of plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earliest stage. It is also settled legal position that, once an application is filed under Order 7 Rule 11 of the CPC, the Court has to dispose of the same before proceeding with the trial. It is not permissible to cull out sentence or a passage of the pleadings and to read it out of the context in isolation. When several factual details have been gone into decide the question of limitation the rejection of plaint at threshold by exercising power under Rule 11 of Order 7 (d) of the Code of Civil Procedure, 1908 is not permissible. Question of limitation being the mixed question of law and facts could not have been decided as a preliminary issue.

12. I have gone through the entire pleadings in the original application. It appears from record that the applicants have filed original application against the respondents for issuance of heirship certificate in the name of applicants and respondent No.1 under the provisions of Bombay Regulation Act, 1827 Vii. I have also gone through the cause of action shown in the application. It appears from paragraph No.11 of the applicants made averments that the cause of action for filing of original application is shown as S.D.O. Patan on 21/06/2024 orally told the applicants to declare them as heirs of Mhatara Nagu Marathe. It means that original application shows that in paragraph No.11 of the original application the applicants have specifically stated that on 21/06/2024 cause of action arose to them for filing the application for heirship.

13. As per Section 9 of Code of Civil Procedure, 1908 Courts to try all Civil suits unless barred; the Court shall have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is

expressly or impliedly barred. From the pleading in the main application it appears that applicants have only prayed for declaration about the succession or issuance of succession certificate in the name of applicants and respondent No.1. After considering pleadings of the parties it clearly appears that at present this Court neither deciding if any dispute arises as to the apportionment in respect of the amount of compensation, dispute relating to land acquisition nor deciding, settling and dealing with any dispute any question which is by or under Maharashtra Project Affected Persons Rehabilitation Act, 1999. After perusal of entire averments made in the original application it appears that it is neither found that the original application is barred by any law. The Ld. Advocate for the respondent No.1 has not made any averments in the present application about the limitation but at the time of argument has raised the objection that original application is barred by law of limitation and therefore it is liable to be rejected. The respondent No.1 has not shown that the original application appears from the statement in the original application to be barred by law. Moreover, the issue of limitation is a mixed question of law and fact which requires not only the examination of the plaint but also other evidence and the said question of limitation cannot be determined at this stage. Therefore, I do not find any substance in the argument advanced by the Ld. Advocate for respondent No.1 that suit is barred by law of limitation and barred by any law and therefore it is liable to be rejected because after considering the contents of the original application prima facie at this stage it cannot be said that that original application is barred by law of limitation unless and until evidence is taken on record and therefore it is not liable to be rejected at this stage without giving proper opportunities to both the sides to lead their

evidence on record. Moreover as per Section 14(2) of the Code of Civil Procedure it is the discretion of the Court a case may be disposed of on a preliminary issue, the Court shall subject to provisions of Sub Rule 2 pronounce judgment on all the issues.

14. Law of limitation is mixed question of law and facts and oral evidence is required to be lead. Under such circumstances, it is incumbent upon the Court to have give an opportunity to the parties to lead evidence on this issue. As per Order 14 Rule 2 of the Code of Civil Procedure, 1908, it is the discretion of Court, whether the issue of jurisdiction/maintainability to be decided as preliminary issue or it is decided alongwith other issues. In my considered opinion, it would be appropriate to decide the said objection of limitation on merits after giving opportunity to the parties to lead evidence. Considering the above facts and circumstances, quoted provisions, and relied citations, I hold that the application for rejection of original application is liable to be rejected. It cannot be said that the original application from the averments made in the original application is barred by any law. It appears from the pleadings of the original application that, it does not disclose hopelessly time barred. I hold that the application for rejection of plaint is devoid of any merit. In the result, I answer point No.1 in the negative and in answer to point No.2, I proceed to pass the following order.

ORDER

The application below Exh.14 for rejection of original application under Order 7 Rule 11(d) of Code of Civil Procedure, 1908 is hereby rejected with cost.

[S. B. Todkar]

Date : 01/02/2025.

Civil Judge Sr. Division, Karad.