

ORDER PASSED BELOW EXH.300 IN R.C.S.NO.167/2005

1. This is the application filed by defendant nos.17, 18 at Exh.300 under O.7 R.11 of the Code of Civil Procedure. Plaintiffs have filed their say at Exh.302 and thereby resisted the application. Perused the application as well as say. Heard learned Advocates for respective parties. Read the written argument filed by defendants at Exh.398 and plaintiffs at Exh.396. I have gone through the various citations filed by both the parties. Both the learned Advocates argued Exh.300 and Exh.383 commonly.

2. According to defendant nos.17 and 18 at Exh.300, plaintiffs have claimed the declaration of ownership and for possession from defendant no.2 to 12. Considering the contentions of plaintiff the cause of action arose on 18th September, 1975. The false reasons are mentioned for filing the suit by plaintiffs. The said suit is filed by the plaintiff after 30 years. Hence, there is no limitation to file the present suit. Date and year of dispossession of plaintiffs is not mentioned in plaint. There is no cause of action against these defendants. Proper court fee is not paid by plaintiffs in the present suit. In such circumstances, according to defendant, the plaint is liable to be rejected.

3. On the contrary, according to plaintiffs the application is falsely filed. So also plaintiffs have not amended with respect to sale deed for which they sought declaration. The Hon'ble High Court passed judgment on 18.09.1975 wherein the complaint regarding Mirashi Kul is rejected. Therefore, as per this order plaintiffs predecessor's ownership is not seized. In R.C.S.No.253/1986 filed before Civil Court, Phaltan, predecessors of plaintiffs are parties. In Appeal No.420/1978 filed by Udaysingh Nimbalkar false compromise decree is drawn. As plaintiffs are not parties to the suit, the said decree is not binding. Rest of all allegations are denied by plaintiffs. Hence, the suit is not barred by any law and hence plaint is not required to be rejected.

4. Considering the above rival contentions, following points arise for my determination. I record my findings thereon with reasons as under :-

Sr.No.	Points	Findings
1.	Whether the Plaint is liable to be rejected as prayed for ?	No
2.	What Order ?	As per final order.

REASONS

5. As per order 7 rule 11 of the CPC, 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 where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so :
- d where the suit papers from the statement in the plaint to be barred by any law;
- e where it is not filed in duplicate;
- f where the plaintiff fails to comply with the provisions of rule 9 :

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to be plaintiff.]

In the light of these provisions it would be just and proper to see whether the defendants have made out the case for rejection of the plaint.

6. The learned council of defendants placed his reliance on reported cases of i) Shanti Budhiya Vesta Patel & Ors. Vs. Nirmala Jayprakash Tiwari & Ors, decided on 21st April, 2010, 2010 ALL SCR 1921 and ii) Ramalingam Chettiar Vs. P.K.Pattabiraman and another ALL 2001 SC 1185. The facts of above citations are altogether different than the case at hand. Therefore, I most respectfully submit that, these case laws are not applicable to the case at hand.

7. Upon perusal of pleadings of plaintiffs it appears that plaintiffs have claimed declaration of ownership that they are co-owner of the suit properties and possession from defendant nos.2 to 12 and defendant no.17, 18 and mandatory injunction against defendant no.1 to 12. Defendants have prayed to reject the plaint on the contentions raised in the application and which are more specifically mentioned in the para 2 of this order. So far as the contention regarding court fee stamp is concerned. On 11.03.2008 order regarding pecuniary jurisdiction passed by my learned predecessor. Therefore, that point is not considered at the time of deciding this application.

8. The Learned Advocate has placed his reliance on the judgments i) Chhotanben and another vs. Kiritbhai Jalkrushnabhai Thakkar, 2019(2) Mh.L.J, ii) Kuldeep Singh Pathania Vs. Bikram Singh Jaryal 2017(6) Mh.L.J., iii) Alpana Gupta Vs. APF Towers Pvt.Ltd. & Anr. 2019 ALL SCR 2018, iv) MD. Mohammadali (Dead) by L.Rs. vs Jagdish Kalita and others 2004(2) Mh.L.J., v) Munni Reddy & Anr Vs. C.Nagaraju & Ors. 2018 ALL SCR 1965, vi) Raghunath Rai Bareja and another vs. Punjab National Bank and others, 2007 (3) Mh.L.J., vii) Shivkumar Sharma vs. Santosh Kumari AIR 2008 Supreme Court 171, viii) Willson Pereira Carvalho and another vs. Nicolau Fernandes and another, 2019(2) Mh.L.J., ix) Pedro do Rosario Fernandes vs Mr.Willfredo Xavier Jos Monteiro & Ors. 2016 ALL MR 844, x) Laxman Bisan Uke and others vs. Ashok Ishwar Shinde and another, 2018(4) Mh.L.J., xi) Mrs.Gaur

Prathibha (Ms.Thakur Pratima Jagatsingh) & Ors. vs. The State of Maharashtra & Ors.,2020(1) ALL MR 311, xii)India Household and Healthcare Ltd. vs. LG household and Healthcare Ltd., and S.B.F. Industries vs. Central Bank of India, 2020(5) Mh.L.J. The observations in the Judgments of Hon'ble Apex Court filed by the plaintiff are helpful for the case of plaintiffs .

9. Mostly these defendants prayed to reject the plaint as on Exh.368 the additional issues are framed. It is pertinent to note that these issues are framed on the contentions raised in written statement of these defendants and are framed as per O.14 R.2(2) of the Code of Civil Procedure. Though the application under O.7 R.11 can be filed at any stage of suit it be noted that the suit is fixed for evidence. The points raised by learned Advocate for defendants are not considered at this stage. Therefore, considering the nature of present suit it cannot be said that plaint be rejected at this stage. Hence, the application deserves to be rejected. These points raised by learned Advocate for defendants will be decided after giving both the parties full opportunity to lead their respective case. No conclusion can be arrived at this stage regarding cause of action. I do not found any merit in the application. Accordingly, I answer point No.1 in the negative and proceed to pass the following order.

ORDER

- 1) Application stands rejected
- 2) No order as to costs.

Phaltan
Date :- 10.02.2021

(Mrs. Ujjwala M. Vaidya,)
Jt. Civil Judge Jr. Dn., Phaltan