

ORDER BELOW EXH.90 IN R.C.S.NO.253/2011

Harishchandra Vs. Ramchandra & Ors.

1. This is an application under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 (C.P.C.) by the defendant No.1.

2. According to the defendant No.1, the suit is false and misleading. In fact, the suit is not within limitation. The plaintiff has not still started the evidence of present suit. Therefore, it is necessary to decide the present application.

3. The plaintiff has objected the application by filing say at Exh.93. According to the plaintiff, the contents of the present application are false and bogus. The suit cannot be dismissed under Order VII Rule 11(d) of C.P.C.

4. According to the plaintiff, he has specifically mentioned the cause of action of the present suit in para 7 of the plaint. The plea of limitation is mixed question of facts and law. Therefore, the suit cannot be dismissed on the point of limitation. The contentions of the plaintiff disclose that, the defendants obstructed the possession of the plaintiff. Hence the plaintiff has cause of action to file the present suit. Therefore, the application is misconceived and required to be rejected with costs.

5. Following points do arise for my consideration in view of the application and say. The finding against each point is recorded with reasons thereof.

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1	Is the application required to be allowed ?	No.
2	What order ?	As per final order.

REASONS

6. Heard the learned advocates for both the sides. The parties have argued in consonance with their pleadings.

7. Perused the entire record.

8. It appears from the application that the defendant No.1 wants to challenge the plaint as it is not within limitation and there is no cause of action. However, it is settled law that, the cause of action is bundle of facts. The plaintiff has specifically pleaded that the defendants obstructed his possession. Therefore, it cannot be said that there is no cause of action of the present suit.

9. So far as the point of limitation is concerned, it is trite position of law that, the point of limitation is mixed question of facts and law. Therefore, it is necessary to give the parties a chance to lead their evidence on that point. In turn, the plaint cannot be rejected on the point of limitation. Hence, the application needs to be rejected with costs. Accordingly, the points No.1 and 2 are answered with following order :

ORDER

The application is rejected with costs.

Phaltan
Date:- 14/08/.2015

(I. M. Naikwadi)
Jt.Civil Judge Jr. Dn. Phaltan.