

MHST200002952020

**R C. S No. 37/2023****Pushpshil vs State of Maharashtra****ORDER BELOW EXH. 105**

Defendant Nos.18 and 19 filed the application for rejection of the plaint under Order VII Rule 11 (a)(d) of the Code of the Civil Procedure, 1908.

02. According to defendant Nos.18 and 19, the suit is barred by Law. The suit is not filed within the period of limitation. The plaint does not disclose cause of action.

03. Defendant Nos. 18 and 19 have further contended that, as per pleadings in the plaint, the area of 43R out of the suit property described in paragraph No.1A of the plaint has been the subject matter of Land Acquisition Proceedings. An award dated 15/12/2001 has been passed by the competent authority i.e. defendant No.2 in respect of the said area. It is alleged that the acquisition award dated 15/12/2001 is void and illegal. Moreover, the procedure and order of handing over possession of the suit property described in paragraph No. 1A-2 in favour of defendant No.17 is alleged to be illegal. There is also the claim by the plaintiffs to have continuing ownership and title over the whole suit property. The suit properties include the property which is subject matter of the award.

04. Defendant No.18 and 19 have further contended that considering pleadings in the plaint and reliefs claimed, the plaintiffs have essentially challenged the land acquisition proceedings and award, and consequently claimed the relief.

05. The defendants further contended that, the suit is barred by the provisions of the Land Acquisition Act, 1894. The civil court has no jurisdiction to entertain and decide upon the grievances put forward by the plaintiff. The suit is also barred by the provisions of limitation Act.

06. The plaintiffs opposed the application with contentions that, the suit is for the relief of declaration, and alternatively for the relief of partition. For deciding these reliefs, the jurisdiction is vested only with the civil court. They have brought the suit in respect of their civil right which this court has jurisdiction to try and entertain. The suit is not barred by any law.

07. Heard learned advocates for both the parties.

08. The learned advocate for defendant Nos.18 and 19 submitted that, the pleadings and reliefs mentioned in the plaint clearly show that the plaintiffs are challenging the acquisition proceedings and the award. Therefore, this court has no jurisdiction to try and entertain the suit. The suit is not well within the period of limitation as the cause of action is said to have arisen in the year 2018. The plaint does not disclose cause of action. The learned advocate for defendant Nos.18 and 19 relied upon the following case laws :

a) **Leela Nagesh Mandke & Ors. Vs State of Maharashtra & Ors., 2006 (4) Bom.C.R.501**, wherein it is observed by Hon'ble Bombay High Court that, "Undoubtedly, the Apex Court in Dhirendrakumar's case (supra) has held that by necessary implication the power of the Civil Court to take cognizance relating to the question of validity or illegality of the Notification or declaration under the said Act, except by the High Court under Article 226, is barred and, therefore, no civil suit will lie to challenge the land acquisition proceedings initiated and undertaken under the said Act. The said Act itself provides a complete machinery to deal with all the issues relating to the acquisition of land initiated under the said Act. In other words, it is a complete Code by itself in relation to all matters to be dealt with in relation to land acquisition proceedings under the said Act. It provides for an adequate remedy for the aggrieved persons on account of acquisition of their land. On that count itself, no suit would lie to challenge the land acquisition proceedings initiated under the said Act.

In any case, the proceedings which were initiated for acquisition of the land in the matter in hand were the subject-matter of dispute before this Court and in terms of the orders passed in the earlier petition, the proceedings were not disturbed on the said ground. Undisputedly, the Notification under Section 4 was issued on 26-5-1989 and the declaration under Section 6 was issued on 25-5-1990. The suit in question was filed on 26-4-2001, that is to say more than eleven years after issuance of the declaration under Section 6 and more than twelve years after issuance of the Notification under Section 4. Merely because the appellants were engaged in filing petitions after petitions, that itself cannot be a justification for entertaining such a suit after the lapse of eleven years. Considering all

these aspects, there is absolutely no substance in the grievance that the authority could not have invoked the powers under Part-II but ought to have proceeded under Part-VII and that therefore the acquisition is de hors the said Act and that, therefore, bad in law”.

Facts of the said case were different from the facts of the instant case. In the said case, the main relief was relating to the declaration that the land acquisition proceedings initiated under a Notification to be declared as null and void.

b) **Padhiyar Prahladi Chenaji vs. Maniben Jagmalbhai & Ors., 2022 ALL SCR 1115**, wherein it is observed by Hon’ble Apex Court that, “In the case of Dilboo Vs. Dhanraji, (2000) 7 SCC 702, it is observed and held by this Court that where there is a dispute that the suit is filed beyond the period of limitation, the plaintiff would have to aver and prove that the suit is within the period of limitation as prescribed and in the absence of any averment or proof to show that the suit is within time, it is the plaintiff who would fail. It is further observed that whenever a document is registered the date of registration becomes the date of deemed knowledge. It is further observed that in other cases where a fact could be discovered by due diligence then deemed knowledge would be attributed to the plaintiff because a party cannot be allowed to extend the period of limitation by merely claiming that he had no knowledge.

Therefore, once the suit is held to be barred by limitation qua the declaratory relief and when the relief for permanent injunction was a consequential relief, the prayer for permanent injunction, which was a consequential relief can also be said to be barred by limitation. It is true that under normal circumstances, the relief of permanent

injunction sought is a substantive relief and the period of limitation would commence from the date on which the possession is sought to be disturbed so long as the interference in possession continuous. However, in the case of a consequential relief, when the substantive relief of declaration is held to be barred by limitation, the said principle shall not be applicable”.

Facts of the said case are different from the instant case. In view of the facts of the instant case, the question of limitation appears to be mixed question of law of facts.

c) **Ramisetty Venkatanna & Anr. vs. Nasyanm Jamal Saheb & Ors., 2023 ALL SCR 1209**, wherein it is observed by Hon’ble Bombay High Court that, “ In the case of Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal, (2017) 13 SCC 174, this Court observed and held as under:

“7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC 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 averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be

strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances 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 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 cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the 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 earlier stage.”

Observations of the Hon’ble Bombay High Court in the said case, make it clear that, the relevant facts which need to be looked into for deciding the application under order 7 Rule 11 CPC are the averments of the plaint only. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law.

d) **Dahiben vs. Arvinbhai Kalyanji Bhanusali & Ors. 2020 ALL SCR 1500**, wherein it is observed by Hon’ble Appex Court that, The

underlying object of Order VII Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

In *Azhar Hussain v. Rajiv Gandhi*<sup>1</sup> this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be 11986 Supp. SCC 315 Followed in *Maharaj Shri Manvendrasinhji Jadeja v. Rajmata Vijaykunverba w/o Late Maharaja Mahedrasinhji*, (1998) 2 GLH 823 permitted to waste judicial time of the court, in the following words :

“12. ...The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even if an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out”.

Observations of the Hon'ble Supreme Court in the said

case, make it clear that the underlying object of order 7 Rule 11 is that in a suit, no cause of action is disclosed or the suit is barred by limitation, the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. Facts of the said case were different from the instant case.

09. Learned advocate for plaintiffs urged that they have filed the suit to protect their civil right. This court being the civil court has jurisdiction to try and entertain the suit. The suit is filed within the period of limitation. The plaint discloses the cause of action.

10. While deciding the application under Order VII Rule 11 of the Code of Civil Procedure, the court has to see what are the pleadings mentioned in the plaint. According to the pleadings of the plaintiff, Tarabai was wife of their ancestor Marutrao, and defendant Nos.6 to 13 as well as plaintiffs are the other heirs. After the death of Marutrao, Tarabai, defendant Nos.6 to 13 and plaintiffs had been cultivating their respective shares in the property (suit property) left by Marutrao as per the partition among them. Under the award dated 15/12/2001 in Land Acquisition proceedings, 43R land / property of Tarabai is shown to have been acquired and accordingly, panchnama and possession receipt (कब्जेपत्रक) are also shown to have been issued. However, at the time of the said acquisition proceedings, Tarabai was having only 27.5R land. Neither the award nor the panchnama or कब्जेपत्रक discloses four boundaries of the land acquired. Therefore, in these circumstances, even though possession of the 42R land of Tarabai is shown to have handed over to defendant No.17, in fact, no such possession is handed over.

11. The plaint discloses that plaintiffs are not seeking the relief of declaration that the award is illegal. However, the plaintiffs are seeking merely declaration that they are owners of the property described in paragraph No.1B and 1C of the plaint which is contentedly left to their share by the partition, and that the award is not binding on the share of the plaintiffs in the property. The plaintiffs are not also seeking the relief of declaration that the award is not binding on the property of Tarabai, whose property is shown to have been acquired under the award.

12. In view of the pleadings of the plaintiffs and reliefs claimed by them, it can be seen that they are neither challenging the acquisition proceedings nor challenging the legality of the award. Undoubtedly, land of the plaintiffs has not been acquired, and the plaintiffs are seeking only the relief that the award is not binding on the property belonging to their share by virtue of the partition, or alternatively to effect the partition. The plaintiffs are not claiming any relief regarding the land belonging to Tarabai, which is shown to be acquired under the Award. Resultantly, it cannot be held that the suit is barred by the provisions of the Land Acquisition Act or Maharashtra Project Affected Persons Rehabilitation Act, 1986.

13. In view of the pleadings of the plaintiff, it can be seen that in the present case the question of limitation is mixed question of law and facts. Resultantly, the suit is also not liable to be rejected on the ground that it is barred by the law of limitation. The plaint specifically discloses the cause of action. In view of the aforesaid reasons the following order is passed :

**ORDER**

1. Application (Exh.105) is rejected.
2. Parties to take note.

Wai  
Date: 22.07.2025

**( A.G.Deshmukh )**  
Civil Judge Senior Division, Wai  
Dist-Satara.

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