

MHTH170028062024



R. C. S. No. 112/2024
Satish Gharat & Ors.
Vs.
Sainath Gharat

Order Below Exh. 14

This is an application filed by defendant under **Order 7 Rule 11 (a) (d)** of the Code of Civil Procedure (in short 'the C.P.C.').

02. It is stated by the defendant that the plaintiff has filed this suit against the defendant for partition, declaration and injunction. The plaintiff has filed revenue records, mutation entries which shows that he has knowledge about the records in 202. he has not filed suit within limitation that is within 3 years. The plaintiff and defendant are not from one family therefore the plaintiff has no right to claim for partition of the suit property. There is no cause of action arose to file the present suit. Hence, prayed for allow the application.

03. Plaintiff opposed the application by filing say at Exh. 15. It is stated that the application is false. The plaintiff has filed suit for partition and also filed genealogy alongwith the suit. He plaintiff has sent notice to the defendant. The plaintiff with collusion of revenue officer changed the revenue record of the suit property. The suit is not barred by limitation. The grounds raised by the defendant are not true and suit can not be rejected under 7 Rule 11 on the mentioned ground. The defendant has filed this application to prolong the suit.. Hence prayed for reject the application.

04. Heard learned advocates for both the sides. This is a suit for partition, declaration and injunction. The present application has been filed by the defendant under Order 7 Rule 11(a) & (d) of the CPC. It is important to see whether plaint can be rejected on the ground raised by the defendant.

The grounds provided in Order 7 Rule 11 are:-

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, failed to do so;
- c) where 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 appears 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.

05. Needless to say that to decide the application under order VII Rule 11 CPC the only averments made in the plaint are relevant. Here, the defendant has raised the ground that the suit has not disclose cause of action and it is not barred by limitation. Prima-facie reading of plaint shows that the the sit is for partition , the plaintiff has sent notice to the defendant through his advocate in 2024 for demanding partition.

06. Cause of action is bundle of facts which gives rise to the cause to enforce the right in the Court of law. Moreover, pleading in that regard in set out in cause of action clause. Thus, in my considered view, the facts stated in the plaint, details mentioned in cause of action clause and prayer clause of the plaint are such bundle of facts which gives rise to plaintiffs to claim relief from Court and accordingly, they constitute cause of action. On bare perusal it appears the plaint disclose cause of action. Thus, plaint cannot be rejected on this ground. Secondly, the defendant argued that the suit is barred by limitation as suit is not filed within 3 years as per Limitation Act. In this context judgment of Hon'ble Bombay High court in **Ganesh Keshav Patole Vs. Shital Sikandar Darne 2018 SCC online Bom 649** assumes importance, wherein it is held that, “ *As per the consistent view held by the various Courts on the issue of res judicata and limitation, both these issues are required to be decided after evidence is led by the parties. This is too early a stage or pre-mature to reject the plaint under O.7 R.11 of the CPC on these grounds.*”. Therefore, in view of judgment of Hon'ble Bombay High court plaint cannot be rejected on the ground of limitation at the

earlier stage. Therefore, at this juncture from the material on record it does not appear that, the suit is not filed within limitation.

07. Hence, considering the above discussion in my view the plaint can not be rejected on grounds raised by the defendant. Therefore, in the interest of justice, I pass the following order,

ORDER

01. Application **Exh. 14** is rejected.

02. No order as to costs.

Date: 17.04.2026
Place: Palghar.

(Sujata R. Bandal)
Jt. Civil Judge Jr. Division,
Palghar.