



**ORDER BELOW EXH.10 IN R.C.S. NO.46/2023**

(CNR No. MHWS02000218-2023)

Yashoda Ingole Vs. Rajkumar Karwa & Ors.

1] Defendant Nos.1 to 3 have filed this application under Order 7 Rule 11 (a) to (d) of the Civil Procedure Code, 1908 (for short 'C.P.C.') for rejection of the plaint on the grounds that -

- i) the plaintiff has no cause of action for filing the suit,
- ii) reliefs claimed by the plaintiff are undervalued,
- iii) the plaintiff has not supplied requisite Court fees stamp for reliefs sought by her, and -
- iv) suit appears from statement in the plaint to be barred by law of limitation.

2] **Contents of this application, in nutshell, are as follows:-**

The plaintiff has filed the present suit for -

- i) declaration of ownership in respect of the land bearing Block No.322/1 admeasuring 01 H. 64 Are situated within the jurisdiction of Washim, Tq. & Dist. Washim, more particularly described in para No.1 of the plaint (for short 'suit land'),
- ii) declaration to the effect that the sale deed pertaining to the suit land executed by Martand Kalbande in favour of defendant Nos.1 & 2 is illegal, and it is not binding upon her, and -

iii) perpetual injunction to the effect that defendants be restrained from causing obstruction to her possession over, or enjoyment of, the suit land.

3] It is contention of defendant Nos.1 to 3 that the plaintiff has stated in the plaint that they are not in possession of the suit land. On the contrary, 7/12 extracts pertaining to the suit land filed by the plaintiff herself go to show that the plaintiff is not in possession of the suit land since so many decades. They have further stated that boundaries of the suit land are not correct one as Sarada Lay-out is not adjacent to any of boundaries of the suit land, and there is no land of defendant Nos.1 & 2 towards Southern side of the suit land. It is, thus, contention of defendant Nos.1 to 3 that the plaintiff has no cause of action for filing the suit & therefore, the plaint is liable to be rejected under Order 7 Rule 11 (a) of the C.P.C.

4] It is further contention of defendant Nos.1 to 3 that the plaintiff has valued the suit at Rs.2,000/-, and she has supplied Court fees stamp of Rs.400/- for reliefs sought by her. They have further stated that consideration of the sale deed dated 27/07/2009 pertaining to the suit land executed by Martand Kalbande in favour of defendant Nos.1 & 2 is of Rs.11,50,000/-. It is, thus, contention of defendant Nos.1 to 3 that the plaintiff has undervalued the suit, and she has not supplied requisite Court fees stamp for reliefs sought by her. Thus, defendant Nos.1 to 3 have stated that the plaint is liable to be rejected under Order 7 Rule 11 (b) & (c) of the C.P.C.

5] Defendant Nos.1 to 3 have further stated that the plaintiff has sought the declaration of the sale deed dated 27/07/2009.

According to them, the said sale deed is registered one & therefore, the plaintiff is supposed to have knowledge thereof on the date of registration thereof. They have further stated that the relief of declaration as to illegality of the said sale deed is required to be sought within 3 years from execution of the sale deed dated 27/07/2009 itself. It is, thus, contention of defendant Nos.1 to 3 that the suit is barred by law of limitation & therefore, the plaint is liable to be rejected under Order 7 Rule 11 (d) of the C.P.C. With this, defendant Nos.1 to 3 have prayed that this application be allowed & thereby, the plaint be rejected under Order 7 Rule 11 (a) to (d) of the C.P.C.

6] The plaintiff has filed her say to this application vide Exh.13. She has stated that she has a cause of action for filing the suit. She has further stated that boundaries of the suit land are correct one. It is further contention of the plaintiff that she has properly valued the suit, and has supplied requisite Court fees stamp for reliefs sought by her. Lastly, she has stated that the suit is well within limitation. With this, the plaintiff has prayed that this application being devoid of merits is liable to be rejected.

7] I have heard Ld. Advocate Mr. Poddar for defendant Nos.1 to 3 & Ld. Advocate Mr. Rathod for the plaintiff at considerable length, and have gone through record of the suit.

8] It is pertinent to note that although during course of an argument, Ld. Advocate Mr. Poddar for defendant Nos.1 to 3 has referred number of documents in order to show that the plaintiff has no cause of action for filing the suit, yet I do not find it necessary to

look into those documents as Order 7 Rule 11 (a) of the C.P.C. requires only perusal of the plaint. Upon close scrutiny of the plaint, it is seen that in para No.7 of the plaint, the plaintiff has mentioned that the cause of action for filing the suit arose on dated 10/03/2023 on which her possession over the suit land was obstructed by defendant Nos.1 to 3. Therefore, in the light of contents of para No.7 of the plaint, it cannot be said that the plaint does not disclose a cause of action. Here, I would like to mention that the expression 'the plaintiff has no cause of action for filing the suit' & the expression 'the plaint does not disclose a cause of action' are entirely different. Order 7 Rule 11 (a) of the C.P.C. provides that the Court shall reject the plaint where it does not disclose a cause of action. It is apposite to note that it is not contention of defendant Nos.1 to 3 that the plaint does not disclose a cause of action. As stated above, the plaintiff has disclosed a cause of action in para No.7 of the plaint. Therefore, in my considered view, the plaint is not liable to be rejected under Order 7 Rule 11 (a) of the C.P.C.

9] It is, however, contention of defendant Nos.1 to 3 that the suit is undervalued & however, the plaintiff has not supplied requisite Court fees stamp for reliefs claimed by her. It is matter of the record that the plaintiff has sought the reliefs as to declaration of ownership, declaration to the effect that the sale deed dated 27/07/2009 is not binding upon her & perpetual injunction in respect of the suit land. She has valued the suit for jurisdictional purpose & for Court fees purpose at Rs.2,000/-, and has paid Court fees of Rs.400/-. It is matter of the record that suit land is nothing but agricultural land. It is pertinent to note that the plaintiff is not party to the sale deed

dated 27/07/2009. However, she has not sought the relief of cancellation of the said sale deed. Therefore, she is supposed to value the relief of declaration to the effect that the sale deed dated 27/07/2009 is not binding upon her with the relief of perpetual injunction at Rs.1,000/-, and to supply Court fees thereon in view of Section 6(iv) (j) of the Maharashtra Court Fees Act, 1959 (for short 'the Act'). Contents of the plaint purports to show that the plaintiff has valued the relief of declaration to the effect that the sale deed dated 27/07/2009 is not binding upon her with the relief of perpetual injunction at Rs.1,000/-, and has supplied Court fees of Rs.200/-.

**10]** Coming to the relief of declaration of ownership as to the suit land, the plaintiff is supposed to value the said relief & to supply Court fees for the said relief as per Section 6(iv) (d) r/w. Section 6(v) of the Act. It is pertinent to note that the subject matter of the suit is neither house nor garden. Therefore, the plaintiff is not supposed to supply Court fees stamp for the relief of declaration of ownership as per market value of the suit land. Contents of the plaint, however, purports to show that the plaintiff has valued the relief of declaration of ownership of the suit land at Rs.1,000/- & has supplied Court fees of Rs.200/-. It is, thus, seen that the plaintiff has correctly valued the relief of declaration of ownership of the suit land, and has supplied requisite Court fees for the said relief. Therefore, in the light of aforesaid discussion, I have no hesitation to hold that the plaintiff has correctly valued the suit & has supplied requisite Court fees stamp for reliefs sought by her. In the result, I have no hesitation to hold that the plaint is not liable to be rejected under Order 7 Rule 11 (b) and/or Order 7 Rule 11 (c) of the C.P.C.

11] It is contention of defendant Nos.1 to 3 that the relief of declaration to the effect that the sale deed dated 27/07/2009 is not binding upon the plaintiff is not within limitation as the plaintiff is supposed to have knowledge of the said sale deed on dated 27/07/2009 itself. Here, I would like to mention that Article 58 of the Limitation Act, 1963 provides that suit for declaration shall be filed within 3 years from the date when right to sue firstly accrues. Here, I would like to mention that the plaintiff has stated in the plaint that she got knowledge of the said sale deed when her son has obtained copies of 7/12 extract of the suit land & mutation entry pertaining to said sale deed. It is true that the plaintiff has not specifically mentioned the date of knowledge as to the sale deed dated 27/07/2009. But, she has stated that the cause of action for filing the suit arose on dated 10/03/2023 on which her possession over the suit land was obstructed by defendant Nos.1 to 3. Here, I would like to mention that the expression 'right to sue first accrues' appearing in Article 58 of the Limitation Act does not necessarily mean date of knowledge of any instrument. Therefore, at this stage, contents of the plaint in the light of Article 158 of the Limitation Act do not lead me to arrive at the conclusion that the relief as to illegality of the sale deed dated 27/07/2009 is within limitation, or it is not within limitation. To decide the limitation of said relief, evidence is required. For sake of convenience, even if it is presumed that the said relief of declaration is not within limitation, then also other reliefs shall remain in the plaint. It is well settled principle of the law that the plaint cannot be rejected partly. Here, a profitable reference may be made of the judgment delivered in the case of Sejal Glass Ltd. Vs.

Navilan Merchants Pvt. Ltd., reported in AIR 2017 Supreme Court 4477, wherein it has been held by Hon'ble Supreme Court that '*partial rejection of plaint is not permissible*'. Therefore, the plaint is not liable to be rejected under Order 7 Rule 11 (d) of the C.P.C.

12] Thus, in the light of aforesaid discussion, I have no hindrance to hold that this application being sans merits is liable to be rejected. With this, I proceed to pass the following order -

**ORDER**

- 1] Application Exh.10 stands rejected.
- 2] Costs in cause.
- 3] Parties to the suit shall take note of this order.

Washim.  
Date - 23/08/2024.

( S. S. Ubale )  
Civil Judge, (Sr. Div.), Washim.

**CERTIFICATE**

I affirm that the contents of this PDF file judgment/order are same word to word, as per original judgment/order.

- 1) Name of Stenographer :- S. P. Kale (Stenographer G-III)
- 2) Name of Court :- Civil Judge (S.D.), Washim.
- 3) Date :- 23/08/2024
- 4) Order signed by the presiding officer on :- 23/08/2024
- 5) Order uploaded on :- 26/08/2024