

R.C.S.No. 107/2021
Nandkishor-Vs-Subhash

MHYA050028172021



Order Below Ex.12
Passed On 17/08/2021

This is an application filed by defendant no. 1 for rejection of the plaint by virtue of Order 7 Rule 11 (d) of Code of Civil Procedure.

2] According to defendant, the plaintiff has filed this suit for partition and perpetual injunction against defendants. It is contended by defendant that, after perusal of plaint para 13 , it is stated that cause of action arose on 06/12/1994 when the father of plaintiff and defendants is died. The names of plaintiff and defendants were recorded on Nuzul record as legal heirs. Therefore, cause of action arose on 06/12/1994. It is further contended that, the suit is barred by limitation and hence the suit be dismissed with costs and prayed that the suit is filed beyond period of limitation, hence the plaint be rejected.

3] The plaintiff opposed the said application by filing his say at Exh 17. According to the plaintiff, present application is devoid of merits and against the provisions of law. On 25/07/2021 defendants tried to ouster plaintiff on that day plaintiff demanded partition of suit property from defendants which is rejected. Thereafter, on received documents from nodal office he issued notice to defendants on 27/07/2021. The suit is for partion

and it is within limitation, and cause of action to this suit is mentioned in plaint and prayer to reject this application.

4] Read application. Perused Say . Heard both sides.

5] The following points arise for my determination. I have recorded my findings against each of them for the reasons as follows.

<u>Points</u>	<u>Findings</u>
[1] Whether the plaint is liable to be rejected as suit is barred by law of limitation ?	... No.
[2] What order ?	... As per final Order.

As to Point Nos.[1] :

6] I heard Ld. Advocate for both sides. Perused the plaint, an application, say & documents filed on record. It is submitted by Ld. advocate for plaintiff that, it is settled position of law that for deciding application under Order 7 Rule 11 C.P.C., averments made in the plaint are germane. For deciding the application under Order 7 rule 11 C.P.C., the Court has to see face of the plaint and nor contention made in the Written-Statement or otherwise. On the other hand Ld advocate for defendant submitted that after reading plaint Para 13, it is stated at the begins that cause of action arose on 06/12/1994 when the father of plaintiff and defendants is died. The names of plaintiff and defendants were recorded on Nusal record as legal heirs. Therefore, issue is only question of law.

Therefore, it is required to decide first. It is also submitted by Ld Advocate for defendant that cause of action is not continues process. After the death of Dashrar cause of action arose, he is died in year 2000. The name of defendant is recorded in Nuzul record in year 2000. Hence suit is filed by plaintiff is not within limitation.

7] In support of his submission he relied on decision of the Honble Bombay High Court in Kishorbhai Premchand Shah v/s Hirji Bhojraj & Sons Kutchi Oswal Jain Chhatralay Trust & Others. However Ld. Advocate for defendant has not produced the copy of above stated citation. I have gone to online above stated citation, wherein it has held that , the relevant facts which need to be looked into for deciding whether to return or reject the plaint are the averments made in the plaint. The trial Court can exercise the power to reject the plaint at any stage of the suit even before registering the plaint or after issuing summons to the defendant or at any time before the conclusion of the trial. I have gone through citation. Facts and circumstances of present case are different therefore citation is not applicable to the present case.

8] In my opinion, As So far as suit for partition is concerned, Article 110 of Limitation Act provides for a period of limitation of 12 years for a person excluded from a joint family property to enforce a right. After perusal of plaint, it reflects that, on 04/08/2021 defendants tried to ouster or disturb possession of plaintiff. The Plaintiff has demanded for partition which is denied by the defendants. It is trite law that, Cause of action is bundle of facts it can be gathered from whole pleading of plaint. Hence I fail to understand how that particular statement can be accepted. It appears that

the learned Advocate for defendant has caught up his bare statement. It is necessary to read whole plaint, in plaint plaintiff has mentioned that cause of action arose to fill suit. It is settled law that, issue of limitation is a mixed question of law and fact. It is decided after recording of evidence. Therefore, there is no substance in the submission of defense. My finding to this issue is in negative against the defendant. Hence, i pass following order.

ORDER

1. The application below Exh. 12 is hereby rejected.
2. No order as to cost

Date :17/08/2021.

(D. B. Sathe)
7th Jt. Civil Judge, Junior Division,
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