

MHYA070026192023



R.C.S. No. 101/2023

Pandharinath Shinde Vs Shriram Bhonde
Order Passed Below exh.13**ORDER BELOW EXH.13**

The present application filed by the defendant no.2 for rejection of plaint as per Order VII Rule 11(a)& (d) of the Civil Procedure Code.

2. The defendant no.2 submitted that, the plaintiff have filed the present suit for specific performance of alleged agreement dated 24/02/1999 and other ancillary reliefs thereof. From the averment of plaint it is crystal clear that the suit is barred by law of limitation. Therefore, the suit is liable to be rejected.

3. The plaintiff by filing his say at Exh.23 resisted the said application. The plaintiff submitted that the present application is not maintainable. The present suit filed by the specific performance of agreement dated 24/02/1999. The defendant accepted the lawful consideration of Rs.15,500/-. The defendant handed over the possession of suit property in favour of plaintiff. By virtue of agreement the defendant required to comply with the terms and conditions therein. However, repeated promises the defendant could not comply with the same. Due to the dispute between defendant no. 1 and 2 the sale deed could not be executed, thereafter defendants refuse to execute the sale deed in favour of plaintiff. Therefore the plaintiff sent legal notice to the defendant. The defendant by reply notice denied the existence of agreement. Therefore, the suit has been instituted within limitation. Therefore, the present application be rejected.

4. The point arisen for determination along with the findings thereon and the reasons therefor are as under :-

POINTS**FINDINGS**

1] Whether the plaint is liable to be rejected under Order VII Rule 11(a)&(d) of CPC 1908? ... No...

2] What Order ? Application is rejected

REASONS**AS TO POINT NO.1 AND 2 :-**

5. Perused the application and say of the plaintiff. Heard ld. advocate Shri. D.R.Raut for defendant no2. and ld. advocate Shri. Bhende for the plaintiff.

6. The plaintiffs relied on the following citations :-
Altaf Fakir Baig -Vs. Goyel Ganga Deve, 2023(4) Mh.LJ. 658, it is held that, the limitation is the mixed question of law and facts and requires adducing evidence, if question of limitation relates to merits of the case.

Considering the present case law and facts of the case in hand above mentioned case law is applicable to the case in hand.

7. It is well settled that while deciding the application under order VII rule 11 of CPC the averments in the plaint is to be considered. The submissions made by the defendant and averments in the written statement cannot be considered. This is the suit for specific performance of agreement. The averment of limitation mentioned in the suit. The plaintiff has mentioned the cause of action and limitation paragraph in his plaint, which is required to be proved.

8. The present suit is filed by the plaintiff for specific performance of agreement dated 24/02/1999. It is well settled that issue of limitation and cause of action is the mix question of facts and law. The cause of action is the bundle of facts. These issues cannot be decided without adducing evidence. The suit is unready till today. On the proper stage of the suit the issues would be framed and the said issue of limitation would be decided on merit. Hence, I proceed to pass the following order :-

ORDER

Application is hereby rejected.

Date : 11.07.2024
Place: Darwha

(C.R. Umredkar)
Jt. Civil Judge, Junior Division,
Darwha, Dist.Yavatmal

