

Order below Exh. 36 in R.C.S. No. 75/2021.

(Dated 22/06/2022)

1. This is an application filed by the defendant No. 1 for rejection of plaint vide order VII Rule 11(d) of the C.P.C. The plaintiffs have strongly opposed this application by filing say.
2. The defendant submitted that the suit is barred by limitation. The plaintiffs have sought declaration in respect of the partition deed dated 30/04/1986 and sale deed dated 07/03/2001. As per article 58 of the Limitation Act 1963, the limitation has been provided only 03 years however the suit is filed in the year 2021 therefore suit is barred by Limitation Act and ultimately barred by Law. He prayed to reject the plaint vide Order VII Rule 11(d) of C.P.C. On the contrary the plaintiffs defend their plaint and submitted that the issue of limitation is mixed question of fact and law, which required to be decided after evidence. The plaintiffs have specifically given date of cause of action therefore, the application of defendant no. 1 is liable to be rejected with costs.
3. Heard both the sides. Perused the application say and record.
4. The Ld. Advocate for defendant No. 1 Mr.S.B.Jadhao vehemently argued that the suit is filed in respect of alleged partition deed dated 30/04/1986 and sale deed dated 07/05/2001, however the limitation is provided for suit of declaration is only 03 years. He relied on the case law of the Hon'ble Apex Court in *Dahiben Vs. Arvindbhai Kalyanji Bhanushali, Civil Appeal No. 9519 of 2019 dated 09/07/2020*. He argued that the issue of limitation is required to be decided at initial stage of proceeding. The present suit appears to be barred by limitation on the face of record. The plaintiffs nowhere disclosed in whole plaint when cause of action arose. He further argued that cause of action arose as per the plaint on 30/04/1986 or 07/03/2001. The plaint itself shows that suit is

barred by Law of Limitation. Therefore, the plaint is liable to be rejected threshold at initial stage. He further relied on Case Law of *the Hon'ble Bombay High Court Jahangir @ Jawahar Kaikashrau Vs. Maureen De Sequeira, Reported in 2017(6) Mh.L.J. 270, 2) Umed Realtors Vs. Shobha wd/o Mahadeo Deshpande, Reported in 2017(3) Mh.L.J. 308, 3) Suresh Kumar Dagla Vs. Sarwan (SC) 2014-8-63, dated 26th August 2014.*

5. Ld. Advocate for the plaintiffs Mr. S.T.Shinde, vehemently argued that present suit is filed for declaration and the cause of action arose to the present suit on 29/08/2021 and 05/09/2021 therefore the suit is well within limitation. He further argued that the issue of limitation is mixed question of law and fact therefore at the stage court can not reject plaint on the issue of limitation. He further argue that issue of limitation is require to be frame first. He relied on the Case Law of the *Hon'ble Apex Court in Civil Appeal No. 5641 of 2021 Salim D. Agboatwala and Ors. Vs. Shamalji Oddhavji Thakkar and Ors.*

6. I have given thoughtful consideration to the argument advanced by both sides. I have been guided by the settled principle of law that while deciding the application regarding rejection of the plaint, the court has to confine to the allegations in the plaint and in the documents produced and relied upon by the plaintiff. The pleas taken by the defendants in the written statement would be irrelevant and cannot be adverted to or taken into consideration.

7. The first objection raised by the plaintiffs that issue of limitation is mixed question of facts and law, therefore, it cannot be decided at this stage. The Hon'ble Bombay High Court in case of *Jahangir (Supra)* observed that,

“There cannot be any manner of dispute that limitation is a mixed question of law and fact. However, that does not mean that in every case, it is a question involving disputed facts. In other words, there may be cases where, the facts on the basis of which, the issue of limitation has to be decided are either admitted, or are undisputed or are clearly borne out of record. The fact that the plaint in the given case can be rejected as being barred by limitation, would itself indicate that there may be a case where, issue of limitation may not necessarily depend on facts, which are disputed, requiring trial, else otherwise, the plaint could never be rejected as being barred by limitation.”

8. I have relied on the above ratio. The argument advanced by the Ld. Advocate for the plaintiffs that issues are required to be framed to decide the application of rejection of plaint is not acceptable.

9. Secondly, it is not disputed by both sides that the provision of Order VII Rule 11 of C.P.C. is mandatory in nature. It states that the plaint “*Shall*” be rejected if the plaint is barred by any law. It is also not disputed that the law mentioned in the provision includes law of limitation also. Therefore, now it is to see whether from the face of record it appears that the plaint is barred by law of limitation ?

10. *Thirdly*, the suit is filed for declaration. Article 58 of the Schedule to the Limitation Act, 1963, prescribe the period of limitation for filing a suit where any other declaration is sought, which is as under,

Description of suit	Period of Limitation	Time from which period begins to run
Art. 58. To obtain any other declaration.	Three years	When the right to sue first accrues.

11. The words “*right to sue*” means the right to seek relief by means of legal proceedings. In other words, when first time cause arose to the plaintiff to approach or seek relief from the Court or any competent forum. To ascertain the first date when the right to sue first accrues to the plaintiff, it is necessary to go through the plaint.

12. It appears from the plaint that the suit is filed for declaration that the plaintiffs be declared owner of the suit property as per partition deed dt. 30/04/1986 and sale deed dt. 07/03/2001 is not binding on the plaintiffs. It is pertinent to note here that the plaintiffs are not the party to the sale deed therefore, the limitation begins to run to the plaintiffs from the date when the right to sue first accrues or moreover from the date of knowledge and not from the date of registration.

13. I have gone through the plaint the plaintiffs have alleged that as per the partition deed dt. 30/04/1986 the property was partitioned amongst the parties. However, the property was in the name of defendant no.2. He has executed sale deed in favour of defendant no. 1 and 3 of the suit property. It is the case of the plaintiff that the defendants have denied his right in the suit property in the year 2021, when the property demolished by defendant no. 4 and 5 for development. There is no any pleading in the plaint from which this court can gather that the plaintiffs had knowledge of the sale deed before 2021. It appears from the plaint that the plaintiffs came with case that the first-time cause of action arose to them to file the suit for declaration that they are owner of the suit property by way of partition deed in the year 2021. Perused plaint no contrary pleading appears on the face of record which shows that before 2021 the first cause of action arose to the plaintiff to approach the Court or take recourse of legal proceeding. The first cause of action arose in the year 2021. The time begins to file declaration suit to the plaintiff from the Jan 2021. The suit is filed in the year 2021. The limitation is provided Art. 58 of the Limitation Act is 3 years. It is prima facie appears from the plaint that the suit is not barred by law of limitation.

14. Defendant no.1 relied on the case law of *Dahiben(Supra)*. I

have gone through the case law. The facts in the present case are different from the facts of that case. In that case, the plaintiff had knowledge of the sale deed in the year 2009, the cause of action arose first time to him in the year 2009, however he filed suit for declaration in the year 2014. The Hon'ble Apex Court held in that case the suit is barred by limitation and the plaint is liable to be rejected. In the present case at hand, the cause of action arose to the plaintiffs in the year 2021 and they filed suit in the year 2021. With due respect of the ratio laid down by the Hon'ble Apex Court in the case of *Dahiben(Supra)*, the ratio is not helpful to the defendants at this stage.

15. I have gone through the case of *Jahangir(Supra)*. The ratio is also not helpful to the defendant because facts in the present case are different from the facts of that case. In that case the plaintiff was aware of the title of the defendant in the year 1985 but he filed suit in the year 2004. Therefore, facts are different from the present suit.

16. I have gone through the case of *Umed(Supra)*. With due respect, the ratio laid down by the Hon'ble High Court is not helpful to the defendants because in that case the Hon'ble High Court held that the period of limitation would commence from 1987, however, the suit filed by the plaintiff in the year 2012. In the present case the period of limitation begins to run in the year 2021 and the plaintiffs have filed the suit in the year 2021. Therefore, facts of both the cases are different. The case law cited by the plaintiffs *Salim (Supra)* is also not helpful to them because facts in the present case are different from the facts in the case law.

17. Considering all above aspect, I am of the view that from the plaint nowhere appears that the suit is barred by law of limitation. Therefore, the application filed by the defendant no.1 is liable to be

rejected with costs. This application is decided at initial stage without evidence of parties on the issue of Limitation, therefore, observation in the order does not create hurdle if issue of Limitation is framed and decided. Thus, I pass the following order.

ORDER

The application Exh. 36 is hereby rejected with costs.

Date – 22/06/2022.
Umarkhed.

(A.S.Shaikh)
Jt. Civil Judge, (J.D.),
Umarkhed.