

ORDER BELOW EXH. NO.95
SPECIAL CIVIL SUIT NO.350/2016

1. This is an application filed by Defendant Nos.9(a) to 9(e) for rejection of the plaint, as contemplated under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (the C.P.C. for brevity).

2. It is pleaded that the present suit has been filed for the relief of the declaration, possession, injunction and other reliefs. The suit is not maintainable and barred by Sections 31 and 34 of the Specific Relief Act and Limitation Act. The plaintiff has no locus standi to file the present suit. No cause of action is disclosed. The plaintiff has neither civil right nor any injury. In para No.7 of the plaint, the plaintiff has specifically pleaded that the plaintiff executed the registered release deed in favour of Mr. Rajendra i.e. father of the Defendant. It is also pleaded that the plaintiff is planning to challenge the release deed. It is admitted position that till today no suit has been filed for cancellation of the said release deed which is legally valid and in existence. The suit is not properly valued. The plaintiff has sought various reliefs which are independent of each other. Therefore, each relief has to be adjudicated separately. The plaintiffs have filed the present meaningless, vexatious and frivolous suit. It is liable to be rejected under Order 7 Rule 11 of the CPC.

3. The reply to this application is at Exh. No.101. The application is opposed. It is contended that the application is false and frivolous. The plaintiff is the owner of the plaintiff's land and 1/3rd share in the share of the deceased Prabhavati Shukla in the suit land. The plaintiff has locus standi to file the present suit on the basis of ownership. The plaintiff has specifically pleaded cause of action in her plaint. The suit has been rightly valued. The plaintiff has paid the Court Fees. The plaintiff has claimed her legal right to possess immovable property as the owner of the plaintiff's land and 1/3rd share of the deceased Prabhavati Shukla. The plaintiff anticipates merits and success in her claim. The present application is liable to be rejected with costs.

4. Heard Ld. counsels for both the sides. Ld. counsel for the Defendant submitted that the present suit has been filed seeking the reliefs of declaration, possession and injunction. The suit is barred by law. It is not maintainable. The plaintiff has no locus standi to file the suit. It is the admitted position to adjudicate the application under Order 7 Rule 11 of the CPC, the plaint alone has to be considered. He further read para No.2 of the plaint. He submitted that the pleadings under this para discloses that in 1985, 3 R land was purchased by the plaintiff and Prabhavati Shukla by the registered sale deed. Such pleading itself demonstrates that the suit is out of limitation. Thereafter, he relied on para No.7 of the plaint. He submitted that the pleading in the said para points out execution of some documents by Rajendra from the plaintiff and Defendant No.8. It is further pleaded that such documents disclosed to be the release deeds. The plaintiff is planning to challenge the alleged release deeds by filing the independent suit. The documents are claimed to be bogus, false and fabricated. Ld. counsel for Defendants submitted that the plaintiff has admitted the existence and execution of the said release deeds. However, the same are neither challenged by an independent suit nor the cancellation of the same is sought in the present suit. He also submitted that the suit is not properly valued. More particularly in respect of relief under clause 26(j) i.e. for mandatory injunction. The MOU is pleaded but not filed on record. The reply filed by the plaintiff is mere denial. There is no cause of action. The plaintiff has neither any right nor any injury. Ld. counsel for the Defendants further relied upon the judgments filed at Exh. No.137 submitting that the plaint is liable to be rejected for want of cause of action. The Ld. counsel for the plaintiff resisted the present application. He submitted that admittedly the release deeds are not challenged. The release deeds are filed by the plaintiff alongwith list at Exh. No.139. The description of the property in such release deeds matters. He compared description of the property in the said release deeds against the description of the property appearing in the sale deed at Exh. No.3/4 dated 28/06/1985. He also submitted that there is pleading about MOU. The same is not in his possession. The documents of release deeds are ex facie void. As such, need not be challenged. The

said release deeds are merely on stamp paper of Rs.100/-. The same are void on the face of record as there are recitals that relevant property is ancestral one which is the subject matter of such release deeds. The documents are appearing to be intended to evade the stamp duty. He relied upon Article 52, 25 of the Bombay Stamp Act. He further submitted that the stamp duty is properly paid. The issue has already been adjudicated by this Court. Therefore, the application is liable to be rejected. The Ld. counsels for the Defendants in reply referred the description of the suit property in plaint para No.1 in the context of the release deeds. He contended the same to be identical. He further pleaded that as such the plaint is liable to be rejected for want of cause of action and valuation.

5. The legal provision enshrined under Order 7 Rule 11 of the CPC may be cited first as :

“11. Rejection of plaint.- 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, fails to do so;*
- (c) where the 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.*

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers

shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

6. For the purpose of deciding an application under clause (a) to (d) of Rule 11 of Order 7 of the CPC, the averments in the plaint are germane. The case of the plaintiff may be considered in terms of the parties, subject matter of the suit, cause of action and reliefs sought. The suit property is defined in the plaint para No.1. It is the landed property of total 42 R in the village Ghorpadigaon, within limits of Municipal Corporation, Pune. It is the suit property and subject matter of the suit. Defendant No.8 is the sister of the plaintiff. Defendant No.9 is the brother of the plaintiff. Defendant No.7 is the proposed co-operative society. The suit property originally belonged to one Khandu Kolekar. He executed sale deed of the suit property in 1985 in favor of Defendant No.7. The plaintiff, deceased Defendant No.9 and their mother Prabhavati purchased under the said sale deed 3 R each as the members of Defendant No.7. The members of Defendant No.7 were not in position to carry any construction over the suit property. The members decided to carry out the construction through Defendant No.1 & his partnership concern : Defendant No.2. Accordingly, one memorandum of understanding was prepared on 18/01/1993. It was prepared just on plain piece of paper. It was neither signed nor endorsed by Defendant No.1. It was handed over to Defendant No.1. The plaintiff could not trace its copy. However, pleaded certain terms. The mother of the plaintiff died on 26/05/1987 intestate. The plaintiff, Defendant Nos.8, 9 and their father Siddhant were her legal heirs left behind. Further, their father passed away intestate on 07/10/1998. All the documents as to suit property were with Defendant No.9. Defendant No.9 was selfish and dominating. He secured the release deeds from the plaintiff and Defendant No.8. Defendant No.9 died intestate on 07/06/2010. Defendant Nos.9(a)

to 9(e) are his legal heirs. The plaintiff was disclosed about the said release deeds on application by one of the legal heirs of Defendant No.8 for the deletion of the name of the plaintiff from the suit property. The plaintiff is further pleaded to intend to file separate suit in respect of the said release deeds for their false and fabricated and bogus contents, also bad in law. In fact, there was no question of releasing her 3 R of the suit property and her undivided $1/3^{\text{rd}}$ share in the suit property purchased by their deceased mother. Defendant No.1 delayed the construction agreed under the said memorandum of understanding and putting the plaintiff in possession of her dwelling unit. Defendant No.9 in his lifetime prevented her from having any communication with Defendant No.1. The plaintiff and the members of Defendant No.7 society were actual physical possession of the suit property. It was open land with fencing. Defendant Nos.3, 5, 6 are the partnership firms of Defendant No.4. In the year 2015, Defendant No.4 started to claim the rights in the suit property. However, declined to show any document in support. On 30/06/2015, the plaintiff was shown one deed of confirmation by Defendant No.4 and Defendant No.9(b). The plaintiff was called upon to sign the same. But, the plaintiff refused thereto for want of complete documents. The plaintiff was assaulted and abused by Defendant No.6. The incident was reported to the police. No progress was there in the investigation as culprits being high handed. The plaintiff did not sign any document. The Defendants are claiming the rights in the suit property out of the documents inter-se. Defendant No.1 defrauded the plaintiff. He appears to have executed documents and deeds in favour of Defendant Nos.3 to 6. Defendant No.9 also helped him. Defendant Nos.1 to 6 started construction activities on the suit land with great pace. Defendant Nos.4 to 6 refused to stop the same. There will be change in the nature of suit property followed by the creation of third party interest therein to the prejudice of the rights of the plaintiff. Accordingly, the present suit has been filed. The declaration has been sought in respect of 3 R of the suit property purchased as her self acquired property, further 3 R by succession. The separation of her share and possession are also claimed for. The permanent injunction to prevent the Defendants from carrying any construction,

creating third party interest is sought for. The mandatory injunction for removing the structure to restore the suit property to its original state is prayed for.

7. The present application under Order 7 Rule 11 of the CPC is appearing to be two fold. It is disputed that the suit is not properly valued. So also, it is contended that the plaintiff has no locus standi for want of cause of action.

8. The present application in para No.6, vaguely disputing the valuation. However, the issue of valuation of the present suit was raised by an application below Exh. No.82. The application was heard. The opportunity was extended to the plaintiff to satisfy the valuation in respect of mandatory injunction sought for under clause 26(j) of the plaint. On being satisfied, as observed below Exh. No.140, the application Exh. No.82 was rejected. Therefore, the issue of valuation need not be discussed anymore over here.

9. The present application is disputing the locus standi of the plaintiff for want of cause of action. The cause of action denotes the bundle of facts sufficient to draw the judicial attention. In other words, cause of action necessarily connotes the facts which together entitles the party to the reliefs sought. The party should have the legal right. The legal right, if infringed, will constitute the cause of action. The plaintiff in the present case claiming the right, title and interest in the suit property. It is claimed by virtue of the sale deed in her favour and by way of succession. However, it is her own pleading in plaint para No.7 that two release deeds were secured by Rajendra, the father of the defendant. It is further pleaded that the plaintiff is planning to challenge the alleged two release deeds by filing independent suit. In order to consider the prayer of rejection of the plaint, the plaint has to be considered. No relief has been sought in the present suit in respect of the said release deeds. There is clear pleading as to the intent to file the separate suit in respect of the said release deeds. Alongwith the suit, the plaintiff has relied upon the documents at list Exh. No.3. The said release deeds were not filed by the plaintiff with list Exh. No.3. In the course of the hearing of the present application, the said release deeds were filed with list

Exh. No.139. Considered the release deeds filed by the plaintiff. The pleading in the plaint is silent as to the material particulars of the release deeds. The release deeds filed alongwith the Exh. No.139 are disclosing the factum of its execution way back in 1999. Further, the said release deeds are the registered documents. They are appearing to be in respect of the suit property to the prejudice of the right, title and interest of the plaintiff therein. The said pleading of the plaintiff in the plaint conveys admission as to execution and existence of those release deeds. Moreover, its validity is neither challenged before this Court nor claimed to have been challenged before any other Court. Therefore, the cause of action does not arise for the existing release deeds in favour of the father of the defendant, thereby relinquishing the right, title and interest in the suit property by the plaintiff against her own interest. Necessarily, therefore, there cannot be any infringement of any legal right, as pleaded in the plaint. As the plaintiff does not have right, title and interest in the suit property, the cause of action will not survive, as pleaded, in the absence of appropriate reliefs as to the said release deeds. In simple words, the right of the plaintiff by sale deed and or the succession, as pleaded in the plaint perse, is defeated by the unchallenged release deeds. Accordingly, the order follows in the interest of justice as :

ORDER

1. The application below Exh. No.95 is hereby allowed ;
2. The plaint is hereby rejected and the further proceedings are closed, vide Order 7 Rule 11(a) of the CPC ;
3. No order as to the costs;
4. The parties to take note.

Date : 02/08/2017
Pune.

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M.N. Phatangare
7th Joint Civil Judge Senior Division, Pune.

I affirm that the contents of this P.D.F. file Order is same word for word as per original Order.

Name of Steno : Abhishek A. Gite.
(Lower Grade Steno)
Court Name : Maneesh N. Phatangare.
7th Joint Civil Judge Senior Division, Pune.
Date of Order : 02/08/2017
Order signed by
the Presiding Officer : 03/08/2017
Order Uploaded on : 03/08/2017