

ORDER BELOW EXH. 13

This is an application filed by the defendants under Order VII Rule 11 of the Code of Civil Procedure (C.P.C. for short) for rejection of plaint.

2. The defendants contend that the plaint does not disclose a cause of action and the suit is ex facie barred by limitation and therefore, the plaint deserves to be rejected under Order 7 Rule 11 of the C.P.C. Hence, this application.

3. The plaintiffs filed say at Exh. 16 and resisted the application. They contend that the facts constituting the cause of action are clearly stated in the plaint and the suit is not hit by the law of limitation. Hence, they pray that the application be rejected.

4. Perused the application, say, plaint and the documents submitted with it. Heard learned advocates for both sides. Following points arise for my determination and my findings on each of them, with reasons, are as under.

Sr. No.	POINTS	FINDINGS
1	Whether the plaint discloses a cause of action?	YES
2	Whether the suit is barred by limitation?	YES
3	Whether the plaint deserves to be rejected under Order VII Rule 11 of the C.P.C.?	YES

4	What order?	Plaint is rejected.
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REASONS

5. It is a settled principle of law that while deciding an application for rejection of plaint, the material that is required to be seen is the plaint and the documents submitted with it. However, the defence is immaterial. Moreover, the plaint has to be read as a whole to determine whether the plaint discloses a cause of action. In the case of **P. V. Guru Raj Reddy and Ors. Vs. P. Neeradha Reddy and Ors., AIR 2015 SC 2485**, the Hon'ble Supreme Court has held that "*It is the averments in the plaint that has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order VII Rule 11, the stand of the defendants in the written statement or in the application for rejection of plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected*". The judgment is relied on by the learned advocate for the plaintiffs. The ratio thereof is applicable in this case. Therefore, while considering the present application, it is apt to consider the case brought by the plaintiffs. The plaintiffs' case, in brief, as can be gathered from a meaningful reading of the plaint, is as follows.

6. The suit properties were originally owned by one Bhikla Raoji Dhodi. He and his wife Jamni had an only son namely Vesta. He was married to Lakhi. The plaintiffs are their children. Bhikla died on 19/11/1958. After his death, his wife Jamni and son Vesta became owners of the suit properties. However, in revenue record, only Jamni's name was mutated. Vestas name was

remained to be mutated by mistake. However, the suit properties were owned and possessed by Jamni and Vesta jointly. Thereafter, Vesta died on 10/02/1964 and Jamni died on 04/08/1967. Thereafter, Lakhi also died on 07/06/1973. Therefore, plaintiffs became the owners and possessors of the suit property. However, the suit properties being in their possession, they never enquired about the revenue record. However, in the year 2005, they obtained copies of 7/12 extracts for some other purposes and were surprised to find the names of defendants. However, the defendants are not relatives of the plaintiffs. They have no concern with the suit property. Therefore, the plaintiffs made enquiries and found that after the death of Jamni, the predecessor of the defendants, namely Ramu Mangal Dhodi, had falsely mutated his name by misleading the revenue authorities that Bhikla and Jamni had no issues and he was their only surviving heir as a nephew. However, he had no relations with Bhikla or Jamni. Moreover, after the death of Ramu, his children, i.e. the defendants, and his wife Gangu, had mutated their names. After knowing the fraud, the plaintiffs confronted the defendants but they avoided to make amends. Therefore, the plaintiffs filed complaint before the Deputy Collector, Thane, at Jawhar Headquarters. He directed the Circle Officer to make enquiry and report. The Circle Officer conducted enquiry and forwarded a report in favour of the plaintiffs. However, no action was taken thereafter. During the enquiry, in May 2005, the defendants denied the status and title of the plaintiffs for the first time. Therefore, as per the legal advice, on 09/01/2006, the plaintiffs filed application for heirship certificate before the C.J.J.D., Dahanu bearing Civil M.A. No. 1/2006. The defendants filed objection to that application on 07/06/2006. Therefore, the application was transferred to the Hon'ble C.J.S.D., Palghar as it was contested. It was re-registered as R.C.S. No. 04/2013. On 19/11/2014, issues were framed therein. After conclusion of the hearing, the court delivered

judgment dated 26/03/2018. The court suspended the proceedings as per the second part of Section 4 of the Bombay Regulation VIII of 1827 until the question is tried by a regular suit instituted by one of the parties. Till such decision, the proceeding was disposed off. As such, the court relegated the parties for a comprehensive suit. After accrual of the cause of action, the aforesaid proceeding was pending. Hence, this suit is instituted on 23/07/2018 and it is within limitation. The plaintiffs pray that they be declared as the owners and possessors of the suit properties and the defendants be perpetually restrained from obstructing their possession.

AS TO POINT NO. 1

7. The first objection of the defendants is that the plaint does not disclose a cause of action. As seen earlier, the suit is for declaration of ownership and perpetual injunction. The main prayer is of declaration of ownership. The relief of declaration of status is included therein and incidental thereto. The relief of perpetual injunction is a consequential relief. In a suit for declaration, such as the present, the cause of action arises when the status or title of the plaintiff is denied by the defendant. On a meaningful reading of the plaint, it shows that the plaintiffs have specifically asserted in paragraph no. 14 that their status as the heirs of Bhikla, and their ownership of suit properties, was first denied by the defendants in May 2005 during the hearing before the Deputy Collector. This assertion itself constitutes a cause of action to institute the present suit. Therefore, it cannot be said that the plaint does not disclose a cause of action. Accordingly, I answer point no. 1 in the affirmative.

8. The learned advocate for the plaintiffs has further relied on the following case laws.

1. Indian Oil Corporation Ltd. Vs. Ramesh and Ors., 2017 (3) ALL MR 544, (Hon'ble Bombay High Court, Nagpur Bench)
2. Srushti Vision and Ors. Vs. Ulhas Buyao, 2000 (2) ALL MR 530 (Hon'ble Bombay High Court, Panaji Bench)
3. Suresh Bhalchandra Shetye Vs. Anil Vasant Pednekar and Ors. 2011 (7) ALL MR 619 (Hon'ble Bombay High Court)

9. I have gone through all these judgments. They are cited on the point of disclosure of cause of action and rejection of plaint on that ground. However, I have already answered the point no. 1 in affirmative holding that the plaint does disclose the cause of action. Moreover, the facts and the questions involved in the case of Suresh Shetye, cited supra, are quite different from the facts in the present case. Therefore, for brevity, I avoid discussing these authorities in detail.

AS TO POINT NO. 2

10. As per the defendants, the suit is barred by limitation. As stated earlier, the suit is primarily for declaration. As per Article 58 of the Limitation Act, the period of limitation to institute such a suit is 3 years and the period begins to run when the right to sue first accrues. In the present suit, as stated earlier, the right to sue first accrued in May 2005 when the defendants denied

the status and the title of the plaintiffs. Thus, in normal course, the period of limitation to institute the present suit would expire in May 2008.

11. However, as per the plaintiffs, after the accrual of cause of action, they filed Civil M.A. No. 01/2006 for grant of heirship certificate, which was later transferred and re-registered as R.C.S. No. 04/2013. It was decided only on 26/03/2018 and the court relegated the parties to a Regular Civil Suit and therefore, this suit is filed in the year 2018. Therefore, as per the plaintiffs, the suit is not barred by limitation. The plaintiffs are, in essence, claiming the protection and benefit of section 14 of the Limitation Act, 1963.

12. As per section 14(1) of the Limitation Act, in computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

13. On a plain reading of the aforesaid provision, it is clear that an essential factor to avail the benefit of that section is that the other civil proceeding must be relating to the same matter in issue and it must have been pending before a Court which, from defect of jurisdiction or other cause of like nature, was unable to entertain it.

14. In the present case, the earlier proceeding was filed for grant of heirship certificate. It is a summary proceeding only for recognising the right of an heir. It was not meant to declare the ownership of the suit property in favour of the plaintiff. Moreover, such a proceeding is always subject to a declaration of right by a civil court in a regular suit. Even if it is assumed for the sake of argument that an heirship certificate was granted, it would not have finally decided the right of the plaintiffs. In case of denial of their right or title, the only remedy available to the plaintiffs was a full-fledged suit for declaration such as the present. A heirship certificate would not have been a sufficient remedy for the plaintiffs. It is not an alternative to a suit for declaration. Moreover, the Bombay Regulation VIII of 1827 nowhere mandates that such a certificate must be obtained before institution of a suit for declaration. Therefore, the remedy to institute this suit was certainly available to the plaintiffs from May – 2005, i.e. the time of first accrual of the cause of action. Once the period of limitation begins to run, the filing of an application for heirship certificate would not stop the running of the time. Hence, in this case, when the time began to run in May-2005, it continued to run till it expired in May – 2008. Moreover, it is pertinent to note that the Court that entertained the previous proceeding was certainly competent to grant the heirship certificate. Therefore, there was no defect of jurisdiction or other cause of like nature when the earlier proceeding was decided. Moreover, the earlier proceeding has not culminated against the plaintiff. Only the grant of the heirship certificate is suspended. Moreover, vide judgment dated 26/03/2018, the Court has not directed the parties to institute any suit. It has merely suspended the proceedings until the parties get their rights decided by a regular suit. It has left open to the parties to institute such a suit or not. In the event that the plaintiffs were to succeed in a regular suit, the earlier court has kept the option of grant of heirship certificate open. Therefore,

it cannot be said that the earlier judgment has given a fresh cause of action to the plaintiffs or that it has extended, or started afresh, the period of limitation. The proviso to Section 9 of the Limitation Act is not applicable in the present case. Under such circumstances, it must be said that the matter in issue in the previous proceeding was not the same as the matter in issue in the present case. It must also be said that the earlier Court did not suffer from any defect of jurisdiction or other cause of a like nature. It is a trite law that ignorance of fact may be an excuse, but the ignorance of law is not a valid excuse. Therefore, the assertion that the plaintiffs were advised to pursue a heirship certificate instead of a full-fledged suit cannot save them from the law of limitation.

15. In view of the above discussion, I must say that the plaintiffs are not protected by the provisions of section 14 of the Limitation Act in the present case. Therefore, the time consumed in prosecuting the application for heirship certificate cannot be excluded from the period of limitation in the present case. Therefore, in view of earlier discussion, the limitation to institute the present suit has already expired in May-2008. The suit having been filed in the year 2018 is therefore clearly barred by limitation.

16. In support of his submissions, the learned advocate for the defendants relied on the following case laws.

1. Shri. Jahangir @ Jawahar & Anr. Vs. Smt. Maureen de Sequeira, 2018(1) ALL MR 330 (Hon'ble Bombay High Court, Panaji Bench)

2. Ravi Bhaskar Wattamwar Vs. Babanrao Narbaji More @ Baba s/o Naru More & Ors., 2025 (4) ALL MR 24 (Hon'ble Bombay High Court, Aurangabad Bench)
3. Khatri Hotels Private Limited & Anr. Vs. Union of India & Anr., AIR 2011 SC 3590 (Hon'ble Supreme Court)

17. I have gone through these authorities. The judgment in the case of Jahangir, cited supra, is referred on the point that plaint can be rejected on the ground of limitation. the Hon'ble Bombay High Court has held therein that 'there may be cases where facts on the basis of which issue of limitation has to be decided are either admitted or undisputed or are clearly borne out of record' and in such cases, the plaint can be rejected on account of bar of limitation. In the present case, the fact that the right to sue first accrued in May-2005 is admitted by the plaintiff and it is clearly borne out of record. Therefore, the ratio of this judgment is clearly applicable in the present case.

18. The judgment in the case of Ravi Vs. Babanrao, cited supra, is also referred on the point of rejection of plaint on the ground of limitation. In that case also, it is held that 'if, on the basis of averments in plaint, it is manifest that suit is barred by limitation, Court need not protract decision on issue of limitation for trial.

19. In the case of Khatri Hotels, cited supra, it is held that the suit is liable to be dismissed if it is barred by limitation.

20. In view of all the above discussion, I must say that the principal relief sought by the plaintiff, i.e., declaration of title, is clearly barred by limitation even on a plain reading of the plaint. Therefore, the plaintiffs have lost their remedy in that regard. Since the main relief itself is barred by limitation, the consequential relief of perpetual injunction also does not survive. Therefore, the plaint is liable to be rejected. Accordingly, I answer point nos. 2 and 3 in the affirmative and in answer to point no.4, pass the following order.

ORDER

(Delivered in the open Court)

1. The application is allowed.
2. The plaint is rejected under Order VII Rule 11(d) of the C.P.C.

sd/-

Date: 24/07/2026
Dahanu

(Alok V. Deshpande)
Civil Judge Junior Division,
Dahanu.