

MHNG020033742024



Reg.C.S.No.438/2024
Sujata & Ors. Vs. Saryodaya
and Ors.

ORDER BELOW EXH.24

(Passed on 4th December 2024)

1. It is an application by defendant no.4 under Order 7 Rule 11 of CPC to reject the plaint. Perused application and say file by plaintiff at Exh.30. Heard advocate of both parties. Perused record.

2. It is contention of defendant no. 4 that plaintiffs have prayed to declare that sale deed of mother of defendant no.2 and 3 dtd. 30.01.1987 its false and liable to set aside. Further, plaintiffs have prayed to declare that the sale deed dtd.28.06.2023 is illegal and void ab-initio. Thus, plaintiffs have challenged sald deed of the year 1987, therefore, the plaint is barred by law of limitation. It is further contention of defendant that plaintiffs have valued the suit on Rs.6,000/-, however, have alternatively prayed for the market value of the suit property which is near about 51,00,000/-, therefore, suit is under valued, hence, plaint is liable to be rejected.

3. Plaintiff by filing say at Exh.13 have opposed the application contending that suit is within limitation and properly valued by plaintiffs.

4. Heard advocate of both parties. Following points arises to decide the application and findings thereon are recorded for the reasons stated below:-

Sr. No.	Points	Findings
1	Whether plaint is barred by law of limitation ?	In the negative..

2	Whether plaint is under valued?	In the affirmative..
3.	What order ?	As per final order.

REASONS

As to point No.1 :-

5. Learned advocate of defendant no.4 has argued that plaintiffs have challenged sale deed of the year 1987, therefore, suit is not within limitation for the relief of declaration.

6. In response learned advocate of plaintiff has argued that plaintiffs came to know about dual ownership of the suit plot firstly on 30.11.2021 and have filed present suit in April-2024 i.e. within three years from the date of knowledge. Hence, suit is within limitation.

7. It is settled law that limitation is mixed question of law and fact, however, plaint can be rejected on the ground of limitation, if plaint expressly discloses that, it is barred by limitation. To find out whether plaint is barred by law of limitation or not, it is necessary to go through the averments made in the plaint.

8. In first paragraph of plaint, there is description of suit property i.e. Plot No.142 situated in the layout of defendant No.1 at village Parsodi. Plaint paragraph No.2 is about relationship between the plaintiffs. In plaint paragraph No.3 it has been averred by plaintiffs that deceased husband of plaintiff No.1 had applied for regularization of plot No.142, however, said application came to be rejected by NIT by letter dtd. 30.11.2021 contending that there is dual ownership and Mr. Sharikh Khan also applied for regularization. Plaintiffs have also produced copy of letter dtd. 30.11.2021 issued by NIT. Said letter appears to be issued by NIT to one Bhushankumar Gupta and copy of the same appeared to be forwarded to the husband of plaintiff No.1. Thus, apparently it is clear that on receipt of letter dtd. 30.11.2021, plaintiffs came to know about

duel ownership of suit plot. Even, in paragraph No. 17 of plaint which is paragraph of cause of action, it is averred that cause of action firstly arose on 30.11.2021. Therefore, suit filed on 05.04.2024, appear to be within limitation, hence, finding as to point No. 1 is recorded in the negative.

As to point No.2:-

9. It is contention of defendant no.4 that plaintiffs have alternatively prayed for market value of plot No.142 by way of compensation contending that the sale deed of mother of defendant no.2 and 3 is false document and some fraud may be committed by defendant No.1. Therefore, it is necessary for plaintiffs to value the plaint on market value of the plot No.142.

10. Learned advocate of defendant no.4 has argued that plaintiffs have prayed to declare that sale deed of mother of defendant no. 2 and 3 dtd.30.01.1987 is false as well as sale deed of defendant no.4 dtd.28.06.2023 by way of which defendant no. 2 and 3 have sold suit plot to defendant no.4 is illegal and void of ab-initio. Therefore, ultimately plaintiffs have claimed title over the suit plot. Though plaintiffs are not executed the sale deed of the year 1987 or 2023 they are not joint-owners alongwith vendor of mother of defendant no.2 and 3, therefore, they are not exempted from payment of court fees being non-executant of the sale deed. In support of his argument, he has placed reliance on law reported in following cases :-

a) ***Niraj s/o. Narendra Wale Vs. Vijaya w/o. Narendra Wale, 2017(4) Mh.L.J. 402***

wherein Hon'ble Bombay High Court after considering the law laid down by Hon'ble Apex Court in the case of ***Suharid Singh @ Sardul Singh AIR 2010 SC 2807*** has held that when plaintiff is non-executant of the sale deed and has not prayed for decree of possession, is

not liable to pay the ad-valorem court fees as per section 6 (iv)(ha) of Maharashtra Court Fees Act.

b) ***Suharid Singh @ Sardul Singh Vs. Randhirsingh and Ors.***
AIR 2010 SC 2807

Wherein Hon'ble Apex Court has held that if non-executant of sale deed who is in possession and sues for a declaration that sale deed is null and void and does not bind him, has to pay fixed court fee for declaration. But if non-executant, not in possession and seeks for declaration alongwith consequential relief of possession he has to pay ad-valorem court fee as per section 7 (iv)(c) i.e. on value of the property.

11] In present suit, it reveals from the prayer clause that plaintiffs have not prayed for possession of the suit plot, though averred in plaint that his claim is for possession. Plaintiffs alternatively, have prayed for compensation from defendant no.1 to the tune of market value of the suit property. Therefore, I am of the opinion that the relief No.i and ii sought by plaintiffs in prayer clauses are the reliefs sought by them being non-executant of the sale deed and without seeking consequential relief of possession. Hence, plaintiffs are not liable to value the suit as per section 6 (iv)(d) of Maharashtra Court Fees Act.

12] The relief of compensation is alternative relief. By way of that relief plaintiff has prayed for compensation to tune of market value of the suit property. On this point, I would like to rely on the law reported in the case of ***Dasarate Meschy and Ors. Vs. Jay Chand Sutradhar and Ors. 1924 SCC Online Patana 116.***

Wherein Hon'ble Patana High Court after considering the law laid down in the case of Kashinath Narayan Vs. Govinda (1891) (15) Bom. 82 has held that when there are alternative prayers, court fee is

liable to be paid on the prayer having higher value.

13] Herein plaintiffs alternatively have prayed for compensation from defendant No.1 to the tune of market value of suit property. However, have valued the suit on Rs.3,000/- on the value of sale deed. Perusal of copy of sale deed of Umadevi Gupta which is of the year 1987, it reveals that; in the year 1987 value of suit property is of Rs.6,000/-. Perusal of sale deed of defendant no.4 which is sale deed of the year 2023 reveals that the market value of the suit property is Rs.50,87,000/- in the year 2023. Therefore, apparently, it is clear that plaintiff has to value the suit on the relief of compensation as per section 6(i) of Maharashtra Court Fees Act and has to pay court fee by providing current market value of the suit property on the basis of documents of valuation obtained from the office of concerned Sub Registrar. It is clear that plaint is under valued. Hence, finding as to point No. 2 is recorded in the affirmative.

14] Though plaint is under valued it is not just to reject the same without giving opportunity to plaintiff to correct the same and to pay deficit court fee. Hence, following order.

ORDER

1. Application is partly allowed as follows.
2. Plaintiff to produce certified copy of ready reckoner or valuation report issued by concerned Sub Registrar about suit property and them to value the suit for alternative prayer, on the current market value of suit property as per section 6(i) of the Maharashtra Court Fees Act and to pay deficit court fee on or before next date.

Nagpur.
Date: 04/12/2024

(M.S. Gade)
17th Jt. Civil Judge (Sr.Dn.),
Nagpur.