



ORDER BELOW EXH. 41 IN RCS NO.2604/2022
[Kum. Kiran Takale vs. Dharmraj Takale & ors.]

CNR No.:- MHPU02-010971-2022

1. The defendants No. 1 to 6 have filed the present application under Order VII Rule 11(a) and (d) of the Code of Civil Procedure, 1908.

2. In brief, they have submitted that there is no cause of action for filing of the present suit. The date of birth of plaintiff is 07/12/2001. On 06/12/2019, she became major. She has not instituted the suit within three years of attaining majority. Therefore, the suit is barred by the Law of Limitation. By partition deed dated 30/08/2015, the partition of suit properties have been taken place between the plaintiff as well as defendants. The said partition is acted upon and the revenue entries to that effect have been made in the revenue record. The plaintiff has not challenged those revenue entries. Once partition is always partition. The plaintiff and her sisters defendants No. 11 to 14 have relinquished their rights in the property acquired by them by partition in favour of their mother defendant No.10 by a Relinquishment deed dated 19/09/2016. The revenue entries in that regard have been effected which are yet not challenged by the plaintiff. The plaintiff has not impleaded the purchasers of the respective properties who acquired rights by sale deeds executed by the defendant No.10. The suit is bad for non-joinder of necessary parties. Those properties have been sold by

defendant No. 10 for legal necessity. The plaintiff has no right in the suit properties. So, the defendants prayed for rejection of plaint.

3. The application is opposed by plaintiff by reply (Exh.45).

4. Heard the learned advocates appearing on behalf of both sides. Read application as well as reply.

5. The plaintiff has instituted present suit for partition, separate possession, declaration, cancellation and permanent injunction. The suit properties are agricultural landed properties described in Para No. 1 of the plaint. The plaintiff has challenged partition deed dated 30/08/2015 entered in between her as well as defendants. During the partition deed, the plaintiff was minor and the partition deed was entered by her mother on her behalf. She has also challenged Gift deeds dated 18/12/2010 and 12/12/2015. Former Gift deed is executed by Late Bhiku Takale in favour of the defendant No. 1 and later one is executed by him in favour of the defendant No. 5. By challenging the said documents, the plaintiff has asked partition and separate possession of the suit properties.

6. The application is moved on the ground that the plaintiff has no cause of action for the suit. The defendants have submitted that the plaintiff has pleaded cause of action of the year 2019 when she attained the majority and dated 28/11/2022 when she issued notice for partition and separate possession. According to the defendants, there was no such cause of action took place for filing of the present suit. But while dealing with application under Clause (a) of Rule 11 Order VII of CPC, the Court has to see the disclosure of

cause of action for the suit in the plaint. As per said provision, the plaint can be rejected if it does not disclose cause of action for the suit. Para No. 18 of the plaint specifically deals with cause of action for the suit. At present, the Court has to see the disclosure of cause of action, which is appearing in the plaint allegations. The Court cannot go into the correctness or otherwise of cause of action pleaded in the plaint while deciding the application of such nature. So, there is no substance in the application.

7. Further, the application is presented under Clause (d) of Rule 11 Order VII of CPC which relates to rejection of plaint if it appears to be barred by any law. As per contention of defendants, the suit is barred under the provisions of Limitation Act as well as Hindu Law. During the course of argument, the learned advocate representing the defendants submitted that already the suit properties have been partitioned by a partition deed dated 30/08/2015. Further, he submitted that once partition is always partition and therefore, the plaintiff cannot seek the relief of partition and separate possession. Further he has submitted that the plaintiff has not asked relief of reopening of partition and therefore, the suit is not maintainable. He has drawn my attention to Article 335 to 338A of Mulla's Hindu Law, which deals with reopening of partition. I have gone through the said Articles. On reading it, it is clear that in exceptional circumstances, the partition can be reopened. But in the case in hand, the plaintiff was minor during the partition deed dated 30/08/2015. She has challenged the genuineness of the said partition deed. For deciding the controversy between the parties, the trial is required. At this stage, the suit does not appear to be barred by law as submitted by the learned advocate for the defendants.

8. Further the application is moved by contending that the suit is barred by the Law of Limitation. According to the defendants, the plaintiff has challenged partition deed dated 30/08/2015. According to them, her date of birth is 07/12/2001 and she attained majority on 06/12/2019. During the course of argument, the learned advocate for defendants submitted that the suit is instituted on 07/12/2022 i.e. beyond the period of limitation of three years as provided by Article 60 of Limitation Act, 1963. The said Article provides limitation of three years to set aside a transfer of property made by the guardian of a ward. Such limitation begins to run when the ward attains majority. The defendants have produced birth certificate of plaintiff which transpires her date of birth 07/12/2001. But at this stage, the Court has to see only the plaint averments which transpires age of plaintiff 20 years. At this stage, by looking her age in title of the plaint, it appears that the suit is filed within two years of attaining of majority by the plaintiff. Moreover, in addition to partition deed, the plaintiff has challenged Gift deeds executed by her grandfather. The submission is made on behalf of defendants that the limitation for challenging partition deed is over. But as discussed herein-above that the documents under challenge are more documents than the partition deed. As the several documents are under challenge and partition is claimed by the plaintiff, the suit does not appear to be barred by the Law of Limitation.

9. The plaint averment transpires that that after attaining majority, the plaintiff asked partition of the suit properties to which the defendants refused. Only after it, she obtained the revenue record and came to know about cheating with her by taking undue advantage of her minority. From the plaint averments, it transpires

that the plaintiff has pleaded playing of a fraud with her while execution of partition deed under challenge. By challenging all those documents, she has also asked partition and separate possession of the suit properties. Issue of limitation is mixed question of facts as well as law. So, at this stage, from plaint averments, the suit does not appear to be barred by the Law of Limitation.

10. By Relinquishment deed dated 19/09/2016, the plaintiff and her sisters have relinquished their share in the properties which came to their share by the partition deed in favour of their mother defendant No. 10. Relying upon the said document, the defendant No. 10 has executed various sale deeds. All the said documents are not challenged by the plaintiff and the purchasers of the respective properties are not impleaded by plaintiff in the suit. But omission to challenge those documents and implead those parties in the suit does not give a right to the defendants to ask for rejection of the plaint. So, there is no substance in the application.

11. In the light of aforesaid discussion, I have come to the conclusion that the plaint discloses cause of action for the suit. From the plaint averments, it does not appear that the suit is barred by any Law. So, there is no substance in the application. Thus, the application is liable to be rejected. In result, I pass following order :-

ORDER

The application is rejected.

Pune.

Date :- 07/06/2023

(K.M. Jaisingani)

10th Jt. Civil Judge Senior Division, Pune

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I affirm that the contents of this P.D.F file judgment/Order are same, word to word, as per the original judgment/Order.

Name of the Stenographer	Mrs. J.S. Tembre,
Name of the Court	Mr. K.M. Jaisingani, 10 th Jt. C.J.S.D., Pune.
Date of Judgment	07/06/2023
Judgment signed by the P.O on	07/06/2023
Judgment uploaded on	07/06/2023

