

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 131 OF 2016

Ravindra Sakharampant Kulkarni
and another

...Applicants

versus

Suresh s/o Uttamrao Kulkarni and others

...Respondents

.....
Mr. A.M. Gholap, advocate for the applicants
Mrs. M.A. Kulkarni, advocate for respondents
.....

CORAM : V. K. JADHAV, J.

DATED: 9th FEBRUARY, 2017

PER COURT :-

1. By consent of parties, heard finally at admission stage.
2. Being aggrieved by the order passed below Exh.14 in R.C.S. No. 495 of 2015, dated 17.6.2016, by 5th Joint Civil Judge, Junior Division, Beed, the original defendants have preferred this Civil Revision Application.
3. Brief facts, giving rise to the present civil revision application are as follows:-

a) Respondent Nos. 1 to 3 original plaintiffs instituted R.C.S. No. 495 of 2015 for cancellation of sale deed dated 30.1.1987 against present applicants. The applicants have strongly resisted the said suit by filing their written statement. The applicants however, have preferred an application No. 14 under Order VII Rule 11 (D) of the C.P.C. for rejection of plaint by referring earlier litigation between the parties and further on the ground that no cause of action arose to institute the present suit and also on the ground that the suit is time barred.

b) The respondents plaintiffs have resisted the application Exh.14 by filing their say with contention that cause of action arose on 4.9.2015 and 20.9.2015, as mentioned in para 10 of the suit and in para 5 of the suit, disputed land shown to have been mortgaged for 27 years, the suit is within limitation.

c) The learned 5th Joint Civil Judge, Junior Division, Beed by its impugned order dated 17.6.2016 rejected the application mainly on the ground that the question of limitation is mixed question of law and facts and the issue of *res-judicata* is always mixed question of law and facts. Hence, this civil revision application.

4. Learned counsel for the applicants submits that the applicants

had instituted R.C.S. No. 508 of 1999 for possession of 36 R of land out of Gat No. 176, against the deceased Uttamrao, father of the preset respondent Nos. 1 and 2 and after his death, his legal heirs and present respondent No.3. The said suit was resisted mainly on the ground that the transaction was not out and out sale but it was a transaction of hand loan and thus the sale deed in respect of suit land was executed as security for repayment of said hand loan. The learned 2nd Joint C.J.J.D. Beed, by its judgment and decree dated 16.1.2003 decreed the suit with costs and thereby directed the defendants therein to deliver the possession of 36 Are land out of land Gat No. 176 as per sale deed Exh. 25 to the plaintiffs and further directed enquiry to be conducted for future *mesne profit*. Being aggrieved by the same, Regular Civil Appeal No. 43 of 2003 was preferred by the defendants and learned Adhoc District Judge-2, by its judgment and order dated 20.8.2007 dismissed the appeal by confirming the judgment and decree passed by the trial court. Being aggrieved by the same, Second Appeal No. 30 of 2008 was preferred before this Court and this Court by order dated 25.2.2009 dismissed the second appeal by confirming the orders passed by the courts below.

Learned counsel submits that the judgment and decree passed by the 1st Joint C.J.J.D. Beed dated 16.1.2003 in R.C.S. No.

608 of 1999 has thus attained finality. The Civil Court in the said suit has recorded finding that defendant No.1 in the said suit (deceased father of respondent Nos. 1 and 2 herein) failed to prove that the sale deed dated 30.1.1987 of land Gat No. 176 is only security to the loan amount and not the sale deed. Learned counsel submits that even then the respondents original plaintiffs have instituted R.C.S. No. 495 of 2015 without disclosing right to sue and by creating illusory cause of action. Learned counsel submits that in view of earlier judgment and decree, which is in respect of suit land and attained finality, the present applicants have received possession of the disputed land in Regular Darkhast No. 68 of 2007 through the Court and accordingly by order dated 3.8.2012 passed by the learned Joint C.J.J.D. Beed in Regular Darkhast No. 68 of 2007, the said Darkhast is disposed of as fully satisfied. Learned counsel submits that the respondents are resorting to frivolous and vexatious litigation. The Regular Civil Suit No. 495 of 2015 has no surviving value and the said suit is barred by the principles of *res-judicata* and also barred by limitation. The respondents have not disclosed any valid cause of action for the relief prayed in the suit. In view of provisions of Order VII Rule 11 of C.P.C., the plaint is liable to be rejected. No triable issue involved in the suit filed by the respondents. The said suit does not deserve trial. However, learned C.J.J.D. Beed by its impugned order dated 17.6.2016 erroneously rejected application Exh.14.

Learned counsel for the applicants, in order to substantiate his contentions, placed reliance on the judgments in the following cases:-

- i) T. Arivandandam vs. T.V. Satyapal and another, reported in (1977) 4 SCC 467,
- ii) SNP Shipping Services pvt. Ltd. and others vs. World Tanker Carrier Corporation and another, reported in 2000 (2) Mh.L.J. 570
- iii) Suresh Kumr Dagla and Sarwan and Anr. reported in 2016 (4) ALL MR 487 (S.C.)
- iv) Laxmi Housing Udyog Pvt. Ltd. vs. Sharad Subramanyan and others, reported in 2016 (2) CCC188 (Cal.)
- v) Mrigendra Singh vs. Sohan Raj Surana and others, reported in 2016(2) CCC (Raj.),
- vi) M. Nagabhushana vs. State of Karnataka and others, reported in AIR 2011 SC 1113,

5. Learned counsel for the respondents original plaintiffs submits that the applicants have filed their written statement in the pending R.C.S. No.495 of 2015. The applicants have not raised any

grounds in their written statement as raised in the application Exh.14. The applicants have filed an application Exh.14 under Order VII Rule 11(D) of C.P.C. however, learned Judge of the trial court has rightly held that the point of limitation is mixed question of law and facts and it does not appear from the statement made in the plaint that suit is barred by limitation. On the other hand, as per the averments made in the plaint, the suit is well within limitation. The applicants have filed an application Exh.14 after framing of issues in the suit. The suit is now posted for evidence of the respondents-plaintiffs in the month of March, 2017. The applicability of principles of *res-judicata* is mixed question of law and facts. The respondents-plaintiffs have instituted the suit with fresh cause of action and it cannot be said at this preliminary stage that the respondents plaintiffs have failed to disclose the cause of action for institution of suit. Learned counsel submits that the trial court has therefore, rightly rejected application Exh.14. No interference is required.

6. It is well settled that the court is competent to reject the plaint at any stage of the proceeding, if it finds that the condition of Order VII Rule 11 exists. The plaint can be rejected under Order VII Rule 11 even after framing of issues. The provision of Order VII Rule 11 are not exhaustive and the court has got inherent power to see that the vexatious litigations are not allowed to take or consume the time

of the court.

7. In the instant case, the judgment and decree passed by the IInd Joint C.J.J.D. Beed dated 16.1.2003 in R.C.S. No. 508 of 1999 has attained finality and the learned Judge of the trial court, in the said suit, has recorded finding that the defendants in the suit failed to prove that the sale deed dated 30.1.1987 of Gat No. 176 was only security for hand loan and not sale deed. The respondents-plaintiffs instituted R.C.S. No. 495 of 2015 with the same averments that the said sale transaction was not out and out sale and the sale deed was executed as security for the hand loan. It has also pleaded that the said land was mortgaged in the form of sale deed in lieu of hand loan obtained by deceased father of respondents-plaintiffs. In para 10 of the plaint, the cause of action shown to have been arisen on 4.9.2015 and 20.9.2015 with averments that the applicants failed to execute the sale deed in respect of suit land though the respondents plaintiffs are in possession of the same. It is a matter of record that in the year 2012, in execution of possession warrant, the present applicants have been put in possession of the suit property through the court process and accordingly R.D. No. 68 of 2007 came to be disposed of by order of the Court, dated 3.8.2012. In pursuance to the decree passed in R.C.S. No. 508 of 1999 and the execution proceedings, the mutation entry 1325 came to be sanctioned in

favour of applicant No.1, however, the present respondents also preferred appeal against the same before the Sub Divisional Officer bearing ROR appeal No. 202 of 2013, which came to be dismissed on 3.1.2015. Against the said order, an appeal preferred before the Additional Collector, bearing appeal No. 5 of 2014, also came to be dismissed on 2.6.2015.

8. It is thus clear that the respondents have been indulging in series of legal proceedings to harass the applicants. The respondents-plaintiffs are resorting gross abuse of process of the court. The respondents-plaintiffs have filed R.C.S. No. 495 of 2015, which does not disclose cause of action. The suit is barred by limitation. The suit is also barred by principles of *res-judicata*. After having lost all previous proceedings, the respondents plaintiffs have instituted suit by creating illusory cause of action. Even learned Judge of the trial court has also observed in para 5 of its impugned order that the suit of the respondents-plaintiffs will be nothing but an abuse of process of law, however, rejected application Exh.14 on the ground that at this *prima facie* stage, the same cannot be considered.

9. In the case of ***T. Arivandandam vs T. V. Satyapal and another (supra)***, relied upon by learned counsel of the applicants, in para 5,6 and 7, the Supreme Court has made following

observations:-

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now, pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Or. VII r. 1 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial court would insist imperatively on examining the party at the first bearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi, "It is dangerous to be too good."

6. The trial court in this case will remind itself of S. 35-A C.P.C. and take deterrent action if it is satisfied that the litigation was inspired by vexatious motives and altogether groundless. In any view, that suit has no survival value and should be disposed of forthwith after giving an immediate hearing to the parties concerned.

7. *We regret the infliction of the ordeal upon the learned Judge of the High-Court by a callous party. We more than regret the circumstance that the party concerned has been able to prevail upon one lawyer or the other to present to the court a case which was disingenuous or worse. It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady actions. The Bar Council of India, we hope will activate this obligation. We are constrained to make these observations and hope that the co-operation of the Bar will be readily forthcoming to the Bench for spending judicial time on worthwhile disputes and avoiding the distraction of sham litigation such as the one we are disposing of. Another moral of this unrighteous chain litigation is the gullible grant of ex-parte orders tempts gamblers in litigation into easy courts. A judge who succumbs to ex-parte pressure in unmerited cases helps devalue the judicial process. We must appreciate Shri Ramasesh for his young candour and correct advocacy."*

10. It is obvious that the plaint can be rejected on plain and obvious cause when the action is one which cannot succeed or in same way is an abuse of process of the court. It cannot be doubted that the court has inherent of jurisdiction to dismiss the application which is abuse of process of court. The abuse of process is clearly established in this case. The lower court ought to have exercised the power under Order VII Rule 11 of C.P.C. since the grounds

mentioned therein stands fulfilled. In the light of above, I proceed to pass the following order:-

O R D E R

- I. Civil Revision Application is hereby allowed.
- II. The order dated 17.6.2016 passed by 5th Joint Civil Judge, Junior Division, Beed below Exh.14 in Regular Civil Suit No. 495 of 2015 is hereby quashed and set aside.
- III. Application Exh.14 in Regular Civil Suit No. 495 of 2015 is allowed in terms of its prayer clauses.
- IV. Complaint is rejected.
- V. Civil Revision application is disposed of.

(V. K. JADHAV, J.)

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