

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 677 OF 2017

MARUTI HOUSING CO-OPERATIVE
SOCIETY LTD., REP THR. ITS
CHAIRMAN SHRI. TULSHIDAS B.
BHOSLE.,

... Petitioner

Versus

MR. AGNELO FRANCISCO DA'COSTA AND
ANR.,

... Respondents

Mr. Shirin V. Naik, Advocate for the petitioner.

Coram:- C. V. BHADANG, J.

Date:- 13th September 2017

P.C.

Heard the learned Counsel for the petitioner.

2. The petitioner is challenging order dated 30/06/2017, passed by the learned Trial Court, by which the application (Exh.D-16), filed by the petitioner under Order VII, Rule 11(a) and (d) of the Code of Civil Procedure (CPC, for short), has been dismissed.

3. The brief facts are that the respondent no.1 has filed a suit against the petitioner (defendant no.2) and the respondent no.2 (defendant no.1) for declaration and for permanent prohibitory injunction and mandatory injunction. The respondent no.1 is seeking a declaration that he has a right of access as an easement of three metres through the property bearing Chalta No.262

along the southern boundary of the property.

4. It was contended on behalf of the petitioner before the Trial Court that the suit does not disclose any cause of action and is barred by limitation. The learned Trial Court has found that the cause of action is pleaded in para 34 of the plaint and the suit having been filed within three years of the accrual of cause of action, the suit 'appears to have been filed within limitation'. In view of this, the application for rejection of the plaint is dismissed.

5. I have heard Shri Naik, the learned Counsel for the petitioner and perused record.

6. The learned Counsel has submitted that there is an alternate access claimed by the petitioner in para 31 of the plaint. It is next submitted that in para 33 of the plaint, the respondent no.1 has stated that the access, which is the subject matter of dispute, has been used since more than 80 years and the alternate way is blocked. The contention is that this will extinguish the easementary right of the respondent no.1.

7. In my considered view, the contention cannot be accepted. These are not the considerations, which can be looked into while deciding an application for rejection of plaint. As noticed earlier,

the rejection of plaint was sought on the ground that the plaint does not disclose cause of action and that it is barred by limitation. In para 34 of the plaint, the respondent no.1 has claimed that the cause of action arose on 25/11/2016, when the petitioner disallowed the respondent no.1 and his family members to pass through the property under Chalta No.262. It is well settled that while considering the prayer for rejection of plaint, the Court has to confine itself to the averments in the plaint and it cannot travel beyond the same. It is evident that the cause of action for a suit for declaration of easementary right would accrue when the use is obstructed. The plaint discloses the cause of action as having accrued on 25/11/2016. Thus, the suit having been filed on 14/02/2017, cannot be said to be barred by limitation ex-facie, on the basis of the averments in the plaint, the period of limitation being three years from the accrual of the cause of action. Thus, the impugned order, dismissing the application for rejection of plaint, does not suffer from any infirmity. No case for interference is made out. The Writ Petition is, accordingly, dismissed.

C. V. BHADANG, J.

SMA