

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.919 OF 2017

Palak Ashokkumar Agrawal and others ... Petitioners
Vs.
Laxmiben Vallabhbbhai and another ... Respondents

Ms Teja Katdare for Petitioners.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 15, 2017

P.C. :

Heard Ms Katdare, learned Counsel for petitioners at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'defendants', have challenged the judgment and order dated 29.07.2016 passed by the learned Civil Judge, Senior Division, Daman below exhibit-18 in Special Civil Suit No.24 of 2016. By that order, the learned trial Judge rejected the application made by the defendants under Order VII, Rule 11 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for rejection of the plaint.

3. In support of this Petition, Ms Katdare submitted that plaintiffs have averred in paragraph 6 that Manekben Laxman and plaintiff No.1 Laxmiben Vallabhbbhai were in continuous cultivation and possession of the suit property. In the year 2010, Manekbbhai Laxman expired. Plaintiff No.2 cultivated and possessed the suit property with plaintiff No.1. In paragraph 7, plaintiff averred that in the year 2010, plaintiff No.1 came to know that application for mutation entry (varsai) in respect of the suit property was made by somebody. Plaintiff No.1 enquired in the office of the Mamlatdar, Daman and found names of Dr. Ashokkumar Shivcharan Agrawal and Radharani Ashokkumar Agrawal,

parents of defendants No.1 to 3. She submitted that though plaintiffs came to know about recording of names of Dr. Ashokkumar Agrawal and Radharani Agrawal in the column of 'occupant' in the year 2010 and that, names of plaintiff No.1 along with the name of Manekben were bracketed and deleted, no Suit was filed immediately. The present Suit is filed in the year 2016.

4. Ms Katdare also invited my attention to the averment made by the plaintiffs in paragraph 8 that plaintiff No.1 filed objection in mutation proceedings. However, mutation entry was made. When plaintiff No.1 took objection for mutation entry, defendant No.4 assured plaintiff No.1 that he will settle the matter by re-conveying the suit property in her favour. Due to old age and health related issues, plaintiff No.1 trusted defendant No.4 and did not challenge the entry of Dr. Ashokkumar Agrawal and his wife. She submitted that plaintiffs did not raise objections as regards recording names of Dr. Ashokkumar and Radharani Agrawal in the column of 'occupant'. After the death of Dr. Ashokkumar Agrawal and his wife Radharani Agrawal, names of defendants No.1 to 3 were recorded and entered in the column of 'occupant' in the suit property. She submitted that from the reading of the plaint, it is evident that the Suit is barred by limitation. The learned trial Judge however held that plaint cannot be rejected under Order VII, Rule 11 of the C.P.C. She submitted that perusal of the plaint in its entirety clearly shows that Suit is barred by law of limitation.

5. I have considered the rival submissions advanced by Ms Katdare. I have also perused the material on record. Plaintiffs have instituted Suit inter alia praying for following reliefs:

“(a) By an Order and Judgment of this Hon'ble Court, the Plaintiffs may please be declared as the co-owners and co-occupants of the suit property.

(b) By an Order and Judgment of this Hon'ble Court, the Sale Deed registered under Serial No.1346/1993 dated 08-11-1993 alleged to be executed by Smt. Manekben and Laxmiben Vallabhbhai in favour of Dr. Ashokkumar S. Agrawal and Smt. Radharani A. Agrawal be declared as null and void and illegal.

(c) By an order and Judgment of this Hon'ble Court, the Mutation entry Nos.1380 and 2402 in form No.9 may please be ordered to be cancelled and deleted in view of declaration of sale deed as null and void.

(d) By an Order and Judgment of this Hon'ble Court, the Defendants, their agents, servants, legal representatives or any body on behalf of the defendants may please be permanently restrained from disturbing the possession of the Plaintiff over the suit property till the final disposal of this suit.”

6. Perusal of the prayers extracted hereinabove shows that plaintiffs have prayed for declaration of their ownership and that they are the co-occupants of the suit property. They have challenged the sale deeds allegedly executed by Manekben and Laxmiben Vallabhbhai in favour of Dr. Ashokkumar Agrawal and Smt Radharani Agrawal. Plaintiffs have also claimed that they are in possession of the suit property and accordingly have prayed for perpetual injunction restraining the defendants from disturbing possession of the plaintiffs. In paragraph 19, plaintiffs have averred that they are in possession of the suit property. In paragraph 20, plaintiffs have contended that defendants along with the police team of 6 to 7 persons came to the suit property on 14.06.2016 and tried to take the possession by putting fencing. Ms Katdare submitted that even if the averments of the plaint are considered, it is evident that plaintiffs acquired knowledge of the sale deeds executed in 1993 in the year 2002 and the Suit is instituted in the year 2016, which is barred by limitation. It is not possible to accept this submission. In the case of ***Sopan Sukhdeo Sable and others v. Assistant Charity Commissioner and others, (2004) 3 SCC 137*** has observed in paragraph-13 thus,

“13. It is trite law that not any particular plea has to be considered,

and the whole plaint has to be read. As was observed by this Court in *Roop Lal Sathi v. Nachhattar Singh Gill*, (1982) 3 SCC 487 only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.”

7. Merely because some of the prayers cannot be granted, it does not mean that the plaint is liable to be rejected in its entirety. As plaintiffs have averred that they are in possession and they prayed for perpetual injunction, it cannot be said that plaint is liable to be rejected under Order VII, Rule 11 of C.P.C. In paragraph 9 of the impugned order, the learned trial Judge has observed that the point of limitation is required to be decided after considering the evidence on record. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed. Needless to observe that while framing the issues, the learned trial Judge will frame issue of limitation as one of the issues and shall try the same along with the other issues. Order accordingly.

(R. G. KETKAR, J.)

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