

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO. 583 OF 2016
WITH
NOTICE OF MOTION NO. 706 OF 2016
IN
SUITS NO. 822 OF 2015**

Deepak Dhanraj Murpana & Anr. ...Applicants/Deft.Nos.1 & 2.

In the matter between :

Canara Bank ...Plaintiff

Versus

Deepak Dhanraj Murpana & Ors. ...Defendants

None for plaintiff.

Mr.D.D. Madon, senior advocate a/w. Mr.Zain Mookhi and Mr.Ooril Panchal i/b Mahimtura and Co. for applicants/defendant Nos.1 and 2.

CORAM : K.R.SHRIRAM, J.

DATE : 24TH AUGUST 2017

P.C.

NOTICE OF MOTION NO. 583 OF 2016

1 This notice of motion has been taken out by applicants for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908. It is the case of the applicants, who are defendant nos.1 and 2 to the suit, that based on the averments made in the plaint that the suit is *ex-facie* barred by limitation.

2 Plaintiff has filed this suit on the basis that they had entered into an Indenture of Lease dated 18th April 1959 with the then original owner of the suit property and under the said Indenture of Lease, plaintiff had right of pre-emption, i.e., plaintiff had the right to purchase the suit property. The original owner expired and the legal heirs sold the property to defendant no.3 by an Agreement dated 27th December 2004 and defendant no.3, in turn sold to defendant nos.1 and 2 pursuant to an Agreement dated 16th November 2011 which is also registered. Paragraph 53 of the plaint reads as under :

53 The Plaintiff states that the cause of action has accrued in favour of the Plaintiff in or around 24th September 2012 when the Plaintiff received correspondence from the Defendant Nos.1 and 2 alleging that they had entered into a Deed of Transfer of Reversionary Rights with the Defendant No.3 in respect of the Suit Property and thereafter on or around 5th November 2012 when the Plaintiff received a copy of the purported Deed of Transfer of Reversionary Rights dated 16th November 2011 from the Defendant No.1. The Suit is therefore not barred by limitation.

4 Therefore, it is plaintiff's case that the cause of action arose in favour of plaintiff in or around 24th September 2012. For the moment, I am not going into the issue as to whether the cause of action arose on 24th September 2012 or earlier. Let us proceed on the basis that plaintiff is correct that the cause of action arose in or around 24th September 2012. The plaint was lodged on 27th April 2015. Article 97 appended to the Schedule to the Limitation Act, 1963 reads as under :

97. To enforce a right of pre-emption whether the right is founded on law or general usage or on special contract	One year	When the purchaser takes under the sale sought to be impeached, physical possession of the whole or part of the property sold, or, where the subject-matter of the sale does not admit of physical possession of the whole or part of the property, when the instrument of sale is registered.
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5 It is the case of plaintiff and admittedly so that the physical possession of the whole of the suit property is still with plaintiff. Therefore, the second part of Article 97, i.e., “*where the subject-matter of the sale does not admit of physical possession of the whole or part of the property*”, will cover the present case. Even if we take plaintiff's case that cause of action arose on 24th September 2012, one year period would have expired on 23th September 2013. Therefore, the suit is *ex-facie* barred by law of Limitation.

6 The suit, therefore, stands dismissed. It should also be noted on last occasion and even today, nobody appeared for plaintiff.

7 Notice of motion stands disposed accordingly.

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8 In view of above, this notice of motion also stands dismissed.

9 After the order was dictated and pronounced, Ms.Bhandary appeared and stated she is concerned for plaintiff.

(K.R. SHRIRAM, J.)