

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

**CHAMBER SUMMONS NO.1703 OF 2016
IN
SUIT NO.261 OF 2010**

Pankaj Jashubhai Patel

....Applicant

IN THE MATTER BETWEEN :

Nirmalaben H.Patel nee Nirmalaben C.Patel

....Plaintiff

V/s.

Pushpaben C.Patel nee Suryaben C.Patel & Ors.

....Defendants

Mr.Gaurav Joshi, senior advocate a/w Mr.Naushad Engineer and Ms.Neeta Jain i/by Neel M.Pungliya for the plaintiff.

Mr.Yogeshwar Bhate i/by Anil P.Bagwe for defendant nos.8 to 12/applicants.

**CORAM : K.R.SHRIRAM,J
DATE : 30.1.2017**

P.C.:-

1 This chamber summons is taken out for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure. Though in the prayer clause it is stated order VII Rule 11(d), Mr.Bhate also made submissions under order VII rule 11(a) i.e., non disclosure of cause of action. Mr.Bhate took me through the plaint because Mr.Bhate in fairness agreed that whether the plaint has to be rejected under order VII Rule 11(a) or (d) has to be seen only from the averments in the plaint.

Mr.Bhate at the outset, submitted that so far as order VII

rule 11(a) is concerned, the plaintiff cannot have any cause of action because the suit property which according to the plaintiff requires to be partitioned by metes and bounds was actually owned by the partnership firm-defendant no.15 and therefore, suit is not maintainable. I am afraid that is not the basis of order VII rule 11(a) which only talks of non disclosure of cause of action. One has to only see whether the plaint discloses a cause of action ; whether the plaintiff has a cause of action or not is not gone into under Order VII Rule 11 of the Code of Civil Procedure.

2 It is also settled law as can be seen from the judgment in the case of ¹T.Arivandandam V/s.T.V.Satyapal & Anr. that the plaint has to be read meaningfully and not formally.

3 I have read the whole plaint with Mr.Bhate. The plaintiff's claim is that the plaintiff, defendant nos.1, 2 and defendant nos.8 to 12 are all children/grand children of late Chaturbhai Patel who expired on 3.3.1962. It is stated that late Chaturbhai Patel jointly acquired with one Purshottam L. Patel a larger piece of land and that large piece of land was split and one part which is the suit property, became exclusive property of late Chaturbhai P.Patel (deceased). The deceased expired intestate on 3.3.1962 leaving behind his widow Kashiben and his children viz. the plaintiff, defendant nos.1, 2,

1 AIR 1977 SUPREME COURT 2421

6 & 7, one Jashbhai (deceased father of defendant nos.8 to 12), one Natubhai (since deceased) and one Hargovind (since deceased). It is stated in the plaint that the suit property therefore, devolved upon the plaintiff and other legal heirs and each became entitled to undivided 1/9th share. It is also stated that the mother Kashiben expired intestate on 24.3.1997, where upon the plaintiff along with her brothers/sisters thus became entitled to 1/8th share in the suit property and other estate of the deceased. It is also stated in the plaint that after Chaturbhai's demise in 1962, the property records were corrected to bring the widow and children of late Chaturbhai as his legal heirs on record. It is also stated in the plaint that after the plaintiff's mother expired, the property records were again amended to delete the name of Kashibai. It is also mentioned in the plaint that Jashbhai made various applications to the Collector under Section 20 of ULC Act for which powers of attorney were given to Jashbhai by not only the plaintiff but also other legal heirs and various orders have been passed by the competent authority. Copies of those documents have also been annexed to the plaint.

4 It is the case of the applicant that the suit property actually belong to defendant no.15 and counsel Shri Bhate is relying on a stray reference to that in one of the orders passed by the competent authority. But if one considers the said document/order, it also

mentions that late Jashbhai Patel who was the father of the applicant was a co-owner. Even powers of attorney also indicate that Jashbhai Patel was only a co-owner. Mr.Bhate pointed out that in paragraph-4 (g) (XI) of the plaint there was a mention that property actually belongs to defendant no.15 and therefore, the plaintiff has admitted that the property actually belonged to defendant no.15 and therefore, suit is not maintainable. I cannot read paragraph 4(g)(XI) or any other part of the plaint the way Mr.Bhate is reading. The basis of the whole suit is the property of which partition is sought was actually owned by late Chaturbhai Patel and devolved upon his legal heirs including the widow and after the demise of the widow, her share also got devolved upon all the legal heirs. Paragraph 4(g)(XI) only refers to a suit which was filed by defendant no.15. That would not mean that it is the case of the plaintiff that the property belonged to defendant no.15. Therefore, submission under order VII rule 11(a) has to be rejected.

5 Now coming to submissions under order VII rule 11(d), Mr.Bhate submitted that the suit is ex-facie barred by limitation. He relied on Article-58 of the Schedule to the Limitation Act because prayer clause-(a) in the plaint is for a declaration. Even if I go along with Mr.Bhate that article-58 governs the subject mater of the suit, in paragraph-21 of the plaint the plaintiff has stated that she came to

know that defendant nos.10 to 12 have denied the claim and share of the plaintiff and defendant nos.1 & 2 in the estate of the deceased for the first time in June-2009 when she received notice dated 22.6.2009 from defendant no.2. Mr.Bhate pointed out that in paragraph-5 the plaintiff has stated that the plaintiff learnt from the defendant no.6 that the learned Arbitrator had passed an award dated 24.10.2007, inter alia, holding that the suit properties were the properties of the said firm and since defendant no.6 is supporting the plaintiff, the plaintiff should be deemed to have knowledge of the award in October-2007 itself and therefore, suit is barred by limitation. Though I do not agree with Mr.Bhate, even for the moment if I accept that plaintiff should be deemed to have knowledge of the award when the award was published in October-2007, the plaint has been lodged on 19.11.2009. Therefore, I cannot hold that the suit is ex facie barred by limitation.

6 Chamber summons dismissed with costs in the sum of Rs.50,000/-. This amount to be paid by way of cheque drawn in favour of the advocate on record for the plaintiff within a period of two weeks from today.

Place the suit for directions on 3.2.2017.

(K.R.SHRIRAM,J)