

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 85 OF 2017

Anjanabai w/o Tukaram Kute
& another

Applicants

Versus

Manoj s/o Gyanchand Wadhwani
& others

Respondents

Mr. S.V. Natu, advocate for applicant.

Mr. V.D. Salunke, advocate for respondent nos. 1 and 2.

CORAM : M.S. SONAK, J.

DATE : 5th JANUARY, 2018

PER COURT:

1. Heard Mr. Natu, learned counsel for applicants and Mr. Salunke, learned counsel for respondents 1 and 2.

2. Applicants, who are original defendants in Regular Civil Suit No. 916/2016 challenge order dated 22.02.2017 made by the II Jt. Civil Judge, Jr. Dn, Georai (trial Judge) dismissing their application under Order VII Rule 11 of the Code of Civil Procedure seeking rejection of the plaint.

3. Mr. Natu, learned counsel for applicants submits that the trial Court has itself recorded in the impugned order that the suit appears to have been instituted beyond prescribed period of limitation insofar as the relief of cancellation of sale-deed is concerned. Mr. Natu further submits that even otherwise, from

reading of the plaint, it is quite clear that plaintiffs were aware of the execution of sale-deed dated 28-10-2010, in the year 2012 itself, when plaintiffs instituted Regular Civil Suit No. 248/2012. Present suit, which is instituted on 30.12.2016 was therefore clearly barred by limitation. Mr. Natsu submits that the plaint is to be read meaningfully and in its entirety. If on account of clever drafting, some illusion of cause of action is created, that need not deter the trial Court from exercising powers under Order VII Rule 11 of the Code of Civil Procedure.

For all these reasons, Mr. Natsu submits that the impugned order warrants interference and, this is a fit case for rejection of the plaint.

4. On the other hand, Mr. Salunke, learned counsel for original plaintiffs points out that the suit is merely for declaration that plaintiffs are the owners of the suit property on the basis of prior registered sale-deed executed in the year 1997. He submits that prayer clause 'B' is basically to seek declaration that the sale-deed dated 28.10.2010, which is subsequent to plaintiffs' sale-deed of the year 1997, is not binding upon plaintiffs. Besides, Mr. Salunke points out that there is prayer for recovery of possession of immovable property which is encroached upon by defendants. Mr. Salunke submits that upon meaningful reading of the plaint in its entirety, it is quite clear that none of the reliefs are barred by limitation nor is this a case where the plaintiffs have failed to disclose any cause of action. Mr. Salunke also points out that under Order VII Rule 11 of the Code of Civil Procedure, it is impermissible to reject only a part of the plaint or to dismiss the

suit insofar as some of the reliefs prayed for. Powers under Order VII Rule 11 of the Code of Civil Procedure can be exercised only when there is cause of rejection of the plaint in its entirety.

For all these reasons, Mr. Salunke submits that the impugned order is neither in excess of the jurisdiction nor is this a case of failure to exercise jurisdiction.

5. It is settled position that at the stage of consideration of application under Order VII Rule 11 of the Code of Civil Procedure, the Court has to focus upon the averments in the plaint and the defect if any, is quite irrelevant. Further, for the purpose of exercise of powers under Order VII Rule 11 of the Code of Civil Procedure, the plaint is to be read in its entirety and, it is impermissible to bisect any portion of the plaint or read the plaint dis-jointly in an attempt to discover whether any part of the plaint warrants rejection.

6. On perusal of the plaint, it does appear that the case of plaintiffs is based upon prior registered sale-deed of the year 1997. On this basis, declaration as to title is applied for. Relief of declaration, prima facie, cannot be said to be barred by limitation. Even, the trial Court, has not held so. Prayer clause 'B' thus speaks about sale-deed dated 28.10.2010. In this prayer, there is reference to declaration of the sale-deed as void as also, declaration to the effect that sale-deed is not binding upon plaintiffs. No doubt, plaintiffs have attempted to undertake some semantic exercise so that, the bar of limitation may not be directly attracted. Nevertheless, on conjoint reading of the entire plaint, it

cannot be said that this is a case where reliefs applied for are barred by limitation on the basis of averments in the plaint itself. So far as prayer clause 'B' is concerned, it is required to be construed that the issue of limitation insofar as prayer clause 'B' is concerned, is a debatable issue. On the basis that one of the reliefs applied for in the plaint may be barred by limitation, it will not be appropriate to reject the entire plaint by resorting to provisions of Order VII Rule 11 of the Code of Civil Procedure.

7. The trial Court has rightly held that the suit in any case is not restricted to seeking mere cancellation of the sale-deed dated 28.10.2010, but the same also relates to recovery of possession of the encroached property. Upon reading of the plaint in its entirety, it is not possible to say that the relief of cancellation of sale-deed dt. 28.10.2010 is the foundational relief. The foundational relief, if at all, in the present case, is in terms of prayer clause 'A' where declaration of ownership is applied for on the basis of registered sale-deed of the year 1997.

8. In these circumstances, it cannot be said that a case is made out for exercise of powers under Order VII Rule 11 of the Code of Civil Procedure. There is accordingly, no reason to interfere in the impugned order.

9. It is clarified that the observations made in the present order are for the limited purpose of deciding whether the plaint warrants rejection under Order VII Rule 11 of the Code of Civil Procedure. Therefore, such observation need not influence the trial Court while deciding the suit on its own merit and in accordance with

law. Needless to add that all objections to the maintainability of the suit or otherwise on merit are kept open and they shall have to be decided at the stage of final disposal of the suit on its own merit and in accordance with law.

10. With the aforesaid clarification, this Civil Revision Application is dismissed without any order as to costs.

(M.S. SONAK, J.)

dyb