

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

CIVIL REVISION APPLICATION NO.160 OF 2016

Shankar Shivaji Jadhav

... Applicant

Vs

Devendra Manikrao Birajdar & Ors.

... Respondents

...

Mr. Y.S.Bhate I/by Kirankumar J. Phakade for the Applicant.

Mr. H.D.Chavan I/by Mr. Ashok B. Tajane for the Respondent Nos.1 to 3.

CORAM : SANDEEP K. SHINDE J.

RESERVED ON : JUNE 13, 2019

PRONOUNCED ON: JUNE 27, 2019

P.C. :

Applicant's/defendant's application for rejection of plaint under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 has been rejected by the trial Court vide order dated 5th January, 2016. It is against this order, defendant no.1, in the Special Civil Suit No.111 of 2010, pending on the file of Joint Civil Judge, Senior Division, Solapur, has preferred this Writ Petition under Article 227 of the Constitution of India.

2 Heard learned counsel for the parties.

3 Order VII Rule 11(d) of the Code of Civil Procedure,

1908 when read in conjunction with Section 3 of the Limitation Act clearly confers power upon the Court to reject the plaint if it is barred by the provisions of the Limitation Act, even though such defence has not been raised before the Court, i.e., even at the initial stage. There is no dispute that while arriving at conclusion under Order VII Rule 11 of the Code of Civil Procedure, 1908, Court is to rely solely on the averments in the plaint and also the documents relied upon by the applicant in support of contentions in the plaint.

4 I have perused the plaint and the impugned order . The suit is for rendition/settlement of accounts and the next prayer is for declaration, that the sale deeds dated 25th September, 2000, 19th March, 2005, 12th May, 2005 and 26th November, 2005 were nominal and not to be acted upon. It appears from overall pleadings that suit is not only for declaration, but it is for settlement of accounts with respect to series of loan transactions between the parties. The suit was instituted in April, 2010 and thus, the defendant sought rejection of plaint on the ground that the prayer for declaration with respect to sale deeds is not within limitation as

per Article 58 of the Limitation Act.

5 Pleadings of the suit refers, to first transaction of Rs.5 Lakhs borrowed by the plaintiffs from the defendant in June, 2000; second in September, 2000 for Rs.5 Lakhs , third in August, 2004 for Rs.11 Lakhs, fourth in March, 2005 for Rs.2 Lakhs. Plaintiff pleaded that in March, 2001, Rs.3,42,000/- were repaid towards first loan, but since balance was not repaid, first sale deed was executed with an understanding that after entire repayment, the defendant shall execute deed of re-conveyance. In paragraphs 5,6 and 7, it is pleaded that one Dr. Patil was tenant in one of the suit properties allegedly sold in favour of the defendants. That defendant no.1 executed tenancy agreement with Dr. Patil in August, 2004 and agreed to adjust amount of rent towards the loan amount. The plaint refers to Rs.2 Lakhs were borrowed by the plaintiffs from the defendant on account of medical emergency and to secure the said amount, executed sale deed in respect of suit property 1B. Another property described as 1C is a lodge and it is pleaded in paragraph 9 that plaintiffs handed over 15 rooms in the lodge to the defendant in

April, 2002 and since then Rs.27 Lakhs received by the defendant towards the rent. Plaintiffs thus pleaded that rent received by the defendants has not been adjusted against the loan nor did the defendants render the accounts.

6 So far as the cause of action is concerned, it is stated, when the plaintiffs requested defendant to settle the accounts and for re-conveyance of the property, they declined to do so in April, 2010 and, therefore, suit instituted in April, 2010 for settlement of the accounts and for declaration that the sale deeds were nominal and were not to be acted upon was within limitation.

7 The learned counsel for the petitioner has relied upon the judgment of the Supreme Court in the case of **N.V.Srinivasa Murthy and others v. Mariyamma (Dead) by proposed L.Rs. And others** AIR 2005 Supreme Court 2897. In the cited case, predecessor of the plaintiff borrowed money from the predecessor of the defendants. By way of security, registered sale deed was executed in 1953 with contemporaneous oral agreement that on return of the borrowed sum, registered re-conveyance deed shall be

executed in favour of the borrower. Even after execution of the registered sale-deed, father of the plaintiffs and thereafter the plaintiffs continued to be in possession of the suit lands. Loan amount was repaid in 1987 and the original registered sale deed dated 5th May, 1953 was returned to the plaintiff with an oral promise by the defendants to execute the registered document in favour of the plaintiff. Plaintiff thereafter filed suit seeking permanent injunction restraining the defendants from interfering with the possession and enjoyment of the suit land by the plaintiffs. The plaintiffs thereupon filed second suit in 1996 for declaration that the plaintiffs are absolute owners of the suit land and for permanent injunction.

. On the backdrop of the facts aforesaid, the Apex Court has held that reckoning the cause from 1987, the suit filed in 1996 was hopelessly barred by time.

8 In my view, facts in the cited case were altogether different than the case in hand. Pleadings disclose that there were series of loan transactions between the plaintiffs and the defendant.

It was agreed between them that the loan would be adjusted against rent. Besides, plaintiffs have also repaid the loan partly to the defendant. It is pleaded that the sale deeds were executed as a security with contemporaneous oral agreement that on return of the borrowed sum, registered re-conveyance deed shall be executed in favour of the borrower. Thus, issue of limitation raised cannot be answered unless parties lead the evidence. That for these reasons no interference is called for in the impugned order. Petition is dismissed.

(SANDEEP K. SHINDE, J.)