IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL REVISION APPLICATION NO. 08 OF 2019

Gutte Infra Private Limited, through its Director
Shri. Swapnil S/o Prabhakarrao Mahajan
vs.
Pundlik Dhanraj Wankhede and others

Office Notes, Office Memorandum of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri. S. V. Bhutada with Shri.Yash Maheshwari, counsel for applicant.
Shri. H. I. Kothari, counsel for respondent No.1.
Shri. Chougule, h/f. Shri. Chhabra, counsel for respondent No.16.
Shri. B. R. Hindustani h/f. Shri. H. D. Dangre, counsel for respondent No.10

CORAM : MANISH PITALE J.
DATED : 20/02/2020

By this revision application the original defendant No.7 has challenged order dated 15/09/2018, passed by the Court of 15th Joint Civil Judge Senior Division, Nagpur, whereby an application filed under Order 7 Rule 11(d) of the Civil Procedure Code, 1908 (CPC) (Exh.76), has been rejected.

2. The respondent No.1 (original plaintiff) has filed a suit for permanent injunction, declaration and possession in respect of plot No.35 located in Mouza Somalwada in the city of Nagpur. It is, interalia, claimed by respondent No.1 that the said plot was allotted to him by the respondent No.2 (original defendant No.1) Society and pursuant thereto a registered sale deed dated 15/03/1988, was executed in his favour by virtue of which he is the legal owner of the said plot of land. It is thereafter, claimed by the respondent No.1 that some office bearers of the respondent No.2-Society illegally and fraudulently caused a power of attorney dated 24/07/2012 to be executed, which in turn is based on a purported resolution of the Society in the year 2009 and a subsequent document purportedly cancelling the allotment of respondent No.1 and also cancelling the registered sale deed executed in his favour. It was claimed that such power of attorney and all subsequent documents created by the defendants, including a document executed in favour of the revision applicant herein were null and void, as they were based on fraud and they were not binding on respondent No.1. Prayers to that effect were made in the aforesaid suit.

3. Insofar as cause of action was concerned, it was stated as follows :-

> "16] The cause of action arose on in the year 2015 when defendant No.1 informed the plaintiff required some development in the society body, further arose when the representation was made by the plaintiff to N.I.T. i.e. defendant No.16 on 08/01/2016 and thereafter legal notice was issued by the plaintiff to defendant No.2 to 15 in the month of February 2016 and the same is continued being defendants have played fraud."

4. In this backdrop, the revision applicant filed the aforesaid application under Order 7 Rule 11 of the CPC, claiming that a bare reading of the plaint would indicate that the suit filed by respondent No.1 was vexatious, as it was hopelessly barred by limitation. It was submitted that nowhere did the respondent No.1 specifically plead in the entire plaint regarding the point in time when he became aware of the said documents/ instruments, of which he was effectively seeking cancellation in terms of the prayer made in the plaint. On this basis, it was contended that the plaint deserved to be rejected.

5. The said application was opposed on behalf of respondent No.1 (original plaintiff). The Court below perused the entire plaint and it came to the conclusion that the statement made in above quoted paragraph 16 of the plaint, although poorly worded, was enough to show that the plaint could not be rejected outright at this stage by exercising power under Order 7 Rule 11 of the CPC.

6. Mr. Bhutada with Mr. Maheshwari, learned counsel appearing for the revision applicant took this Court through the averments and pleadings in the plaint. On the basis of reading the plaint exhaustively, including above quoted paragraph 16 of the plaint, it was submitted on behalf of the revision applicant that there was no pleading at all on behalf of respondent No.1 as regards the point in time when the said respondent became aware about the documents/instruments in respect of which specific prayers were made regarding declaration and effectively cancellation of such documents/instruments. By inviting attention of this Court to Article 59 of the Limitation Act, 1963, it was submitted that even if the second part of the said Article was to be applied, the suit ought to have been filed within three years of the respondent No.1 becoming first aware about such documents/ instruments. It was submitted that the pleadings in the plaint were woefully inadequate to show that the respondent No.1 satisfied the requirement of pleadings in the context of Article 59 for the Limitation Act, 1963. It was submitted that the Court below had read something more than what was existing in the pleadings, which was impermissible and that therefore, the impugned order deserved to be set aside. It was conceded that although there might be cause of action for the respondent No.1, but the same stood still born due the intervention of the law of limitation and the absolute deficiency in pleadings to get over the said position of law. Reliance was placed on judgment of Hon'ble Supreme Court in case of **Sopan Sukhdeo Sable and others vs. Assistant Charity Commissioner and others, (2004) 3 SCC 137** and judgment of this Court in the case of **Sushil s/o Sohanlal Agrawal vs. Harishankar Ramnivas Sharma and another, 2016 (4) Mh.L.J. 904.**

7. On the other hand, Mr. Kothari, learned counsel appearing for respondent No.1 submitted that paragraph 16 of the plaint was properly interpreted by the Court below while holding in favour of respondent

No.1. It was further submitted that since documents filed along with the plaint could be read with the plaint by the Court while considering an application under Order 7 Rule 11 of the CPC, document No.2 filed with the plaint which was the legal notice, demonstrated that it was sufficiently stated in detail as regards the manner in which knowledge was obtained by the respondent No.1 in the year 2015 regarding the said documents, which were subject matter of challenge in the suit. It was submitted that the pleading in paragraph 16 of the plaint was sufficient, read with the relevant portion of the aforesaid legal notice issued in February, 2016. It was further submitted that the respondent No.1 was the legal owner of the plot in question on the basis of the aforesaid sale deed executed in his favour way back in the year 1988 and documents like the aforesaid power of attorney executed in 2012 and all documents executed subsequent thereto were a product of fraud and they were clearly void in the eyes of law. Attention of this Court was invited to the relevant resolution purportedly passed by the Society, whereby the allotment letter and registered sale deed executed in favour of the respondent No.1 was said to have been cancelled and that too behind the back of the said respondent. It was submitted that considering the entirety of the pleadings in the plaint and the nature of prayers made on behalf of respondent No.1, it was evident that the Court below had adopted an appropriate approach while passing the impugned order. Reliance was placed on the judgment of Hon'ble Supreme Court in the case of **Shaukathussain Mohammed Patel vs. Khatunben Mohmmedbhai Polara, (2019) 10 SCC 226.**

8. Heard learned counsel for the rival parties and perused the material on record. This Court in the present application is concerned with the manner in which the Court below has exercised power while rejecting the application filed by the revision applicant under Order 7 Rule 11 of the CPC. The power exercised by the Court under the said provision is such that a litigation is nipped in the bud and it is to be exercised when a perusal of the plaint and documents filed therewith give an impression that the original plaintiff has initiated a vexatious proceeding before the Court, which does not deserve consideration on merits at all. One of the facets of exercise of such power is that when the Court comes to the conclusion that the original plaintiff has either failed to make out cause of action or that the cause of action sought to be agitated is barred by operation of law including law of limitation, the Court can certainly exercise power to reject such a plaint, ensuring that the matter does not go to trial. In the present case, a perusal of the plaint indicates that according to the respondent No.1, the original defendants have committed fraud, resulting in a situation where he is likely to suffer loss of a property of which according to him, he is the absolute owner on the basis of a registered document. It is claimed that with regard to the plot in question which was allotted to respondent No.2-Society, registered sale deed dated 15/03/1988 exhists and yet the original defendants acted in such a manner that he is faced with the possibility of losing out on his right in the said property. On this basis, it is claimed that the power of attorney dated 24/07/2012, executed by the original defendant No.4 and all documents subsequent thereto are product of fraud, consequently being null and void and specific prayers in respect of such documents have been made in the plaint. The respondent No.1 has made reference to the said documents throughout the plaint and in the above quoted paragraph 16, the cause of action has been pleaded. The question that arises for consideration is, as to whether on overall reading of the plaint, particularly, paragraph 16 thereof, and also upon perusal of the documents filed with the plaint, it can be concluded at this stage itself that the suit is barred by limitation under Article 59 of the Limitation Act, 1963, as claimed by the revision applicant herein.

9. In a recent judgment in the case of **Gauri Venkatraman vs. Vasantrao and others, 2020 SCC online Bom.161** this Court has reiterated the position of law that while considering an application under Order 7 Rule 11 of the CPC, the Court can look into the plaint as well as the documents filed along with the plaint, although the veracity of the documents so filed cannot be called into question. Therefore, there can be no doubt about the fact that the Court below could have and this Court can certainly look into document No.2 i.e. the aforesaid legal notice, along with the plaint on record to examine the contentions raised on behalf of the rival parties. Paragraph 16 of the plaint pertaining to cause of action has been already quoted above. According to the learned counsel appearing for respondent No.1, legal notice issued on his behalf and on behalf of the President of the respondent No.2-Society, which is document No.2 filed along with the plaint, is also relevant in this context. This Court has perused the aforesaid legal notice wherein paragraph (J) reads as follows :-

> "J. However, it was in the year 2015 that Shri. Dhiraj Gopichand Gedam became the president of the Bhartiya gruh samasaya nivaran sansthan and in view of the Order dated 25/07/2012 the Schedule-I was accordingly amended in the record of the Hon'ble Charity Commissioner in the year 2015. That thereafter it was observed by the president that no one has maintained the record of the Society and faced serious non-cooperation from ex-members. That accordingly he started collecting documents under RTI and personally from revenue offices. That in the the meanwhile caution notice was published by the president of the society in newspaper and it was because of the paper notice my client came in cntact with president Shri. Dhiraj G. Gedam and he informed Shri. Dhiraj Gedam about his plot No.35 and Sale Deed and about khasra No.159/4 and 7. that Shri. Dhiraj G. Gedam orally explained his helpless position and assured that he is already collecting necessary

> documents from NIT and only after that the actual truth will come out. Thus in the month of January **2016** my client came across the record of NIT and entire fraud as explained by the president of Bhartiya society and same is reproduced so that actual truth of rampant corruption and misuse of public offices is demonstrated.*"*

10. This Court finds that the observations made by the Court below regarding lack of details given in paragraph 16 of the plaint appear to be reasonable, but it cannot be said that paragraph 16 of the plaint, which is quoted above, does not indicate at all as to what the respondent No.1 as the original plaintiff seeks to plead in respect of accrual of cause of action and the knowledge acquired by respondent No.1 with regard to the documents, in question. The said paragraph read with the above quoted relevant portion of the legal notice clearly indicates the manner in which the respondent No.1 claims to have acquired knowledge of the documents which are made subject matter of the challenge in the aforesaid suit. This Court is unable to agree with the submissions made on behalf of the revision applicant that there is absolute lack of pleadings in the plaint and that therefore, looking at the documents filed along with the plaint would be of no consequence. A perusal of the entire plaint, including paragraph 16 thereof and reading it along with document No.2 i.e. legal notice on record gives an impression to this Court that the pleadings on record cannot be said to be deficient to such an extent that the suit requires to be nipped in the bud by exercising power Order 7 Rule 11 of the CPC.

11. It is a different matter that the respondent No.1 may still be put to the test of leading evidence in support of his claim regarding the point in time when the cause of action accrued for him and that could certainly be a matter of trial. Therefore, this Court is not going into details regarding the questions raised by the rival parties about applicability of either Article 56 or Article 59 of the Limitation Act, 1963, in the facts and circumstances of the present case.

12. As regards the judgments on which the learned counsel for the revision applicant has placed reliance, there cannot be any quarrel about the propositions of law laid down in the said judgments, particularly, the principle laid down by Hon’ble Supreme Court that the pleadings on record have to be appreciated without any addition or subtraction of words, but as noted above, this Court is satisfied that the pleadings in the plaint in the present case read with the documents on record need not require any addition or subtraction for analyzing as to whether sufficient material was on record in respect of the claims made by the respondent No.1 regarding accrual of cause of action. Therefore, the said judgments are not of much assistance to the revision applicant. As regards the judgment on which the learned counsel for the respondent No.1 has placed reliance, the Hon'ble Supreme Court has noticed that when an element of deception and fraud is said to have been practised on the original plaintiff in the context of challenge to certain documents, the entirety of the averments in the plaint are required to be appreciated. In the present case, there cannot be any doubt about the fact that the main thrust of the pleadings on the part of respondent No.1 is that he has been defrauded by the defendants and that therefore, the documents in question need to be cancelled. Thus, an overall appreciation of the pleadings on the record do indicate that no error can be attributed to the Court below in rejecting the application filed by the applicant herein for rejection of plaint under Order 7 Rule 11 of the CPC.

13. In view of the above, this court finds that there is no merit in the present revision application. Accordingly, it is dismissed. It is made clear that the Court below would be at liberty to frame an issue on limitation, if found to be appropriate, to be decided along with other issues to be framed in the suit.

14. It is further made clear that the proceedings before the Court below shall continue, without being influenced by any observations made by this Court in the present order.

JUDGE

KOLHE/P.A.