

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

923 CIVIL REVISIONS APPLICATION NO.45 OF 2020

DEELIPKUMAR SAGARMAL SABOO
VERSUS
RAMAVTAR SAGARMAL SABOO

...
Advocate for Applicant: Mr. Bajaj Anil S.
Advocate for Respondent/Sole: Mr. Anand Bhandari
...

CORAM : AVINASH G. GHAROTE, J.

DATE : 3rd July, 2021

P. C. :

. Heard Mr. Bajaj learned counsel for the applicant and Mr. Bhandari, learned counsel for respondent/sole.

2. The application filed by the applicant, who is the original defendant in RCS No.108/2019, under Order 7 Rule 11 (a) & (d) of the Civil Procedure Code, has been rejected, being aggrieved by which, the present Civil Revision Application has been filed. It is contended by Mr. Bajaj, learned counsel for the applicant, that the averments in the plaint, do not disclose a cause of action. It is contended, that though it is the plea, that the gift deed dated 6/12/2014, was a nominal document, no relief for its cancellation has been sought in the plaint. The plaint also does not disclose, that

possession was not parted under the gift deed dated 06/12/2014, in spite of which, in Para-6 of the plaint, it is claimed that the suit has been filed for recovery of possession. Though prayer Clause 'A' in the plaint, has not been filed on record, both the learned counsel agree, that prayer Clause 'A' in the plaint is claiming a decree for recovery of possession. Mr. Bajaj submits, that the entire pleadings in the suit, are result of the clever drafting, without disclosing, the cause of action. Insofar as Order 7 Rule 11 (d) is concerned, Mr. Bajaj submits, that the limitation for challenging the gift deed dated 06/12/2014 has already expired and therefore, the suit would also be hit by limitation.

3. Mr. Bajaj places reliance upon **Raghwendra Sharan Singh V/s Ram Prasanna Singh (Dead), 2020 (16) SCC 601** and specifically Paras 6.4, 8 & 9 in support of his submissions.

4. Mr. Bhandari learned counsel for the respondent/original plaintiff submits, that though the suit may not have been properly drafted, however, Para-6 of the plaint, discloses that the cause of action for the suit arose on 28/03/2019, when the defendant refused to accept the title of ownership of the plaintiff, which is sufficient for the purpose of Order 7 Rule 11 (a). Insofar as the

position under Order 7 Rule 11(d) is concerned, learned counsel submits, that the same is clearly not attracted and the arguments of Mr. Baja are clearly based upon surmises.

5. A perusal of the plaint, indicates, that it is a suit for recovery of possession of the suit property from the defendant, with an added prayer of a decree for perpetual injunction that the defendant be restrained from creating a third party interest therein. Though the recitals in Paras 3, 4 & 5, mention about the gift deed dated 06/12/2014, to be nominal in nature, and so also about a memorandum of understanding, purported to have been executed in November, 2017 that if required a registered document of transfer in favour of the plaintiff, would be executed subsequently, it is an admitted position, that no relief has been sought vis-a-vis the gift deed dated 6/12/2014, which is for the obvious reason, that as on the date of the filing of the suit, which has been filed in April, 2019, the said relief, already stood barred by limitation. It however remains to be seen, that on a plain reading of the plaint averments, which as per the settled position of law, are only to be looked into for the purpose of an application under Order 7 Rule 11 of the Civil Procedure Code, whether the same discloses a cause of action. It is quite altogether different, that the plaintiff, may ultimately not

succeed in the suit, however that is not a factor, which can be considered at the stage of considering an application under Order 7 Rule 11(a) of CPC. In my considered opinion, the averments as made in Para 6 to the effect that the cause of action arose on 28/03/2019 when the defendant refused to accept the title and ownership of the plaintiff, is a specific averment, which satisfies requirement of a cause of action as contemplated by law.

6. Insofar as the plea regarding Order 7 Rule 11(d) of CPC is concerned, it is too far-fetch to say that in absence of a challenge to the gift deed dated 06/12/2014, the provision of Order 7 Rule 11 (d) would be attracted, for the same to be attracted, there has to be a relief which would fall within the four corners of the requirement of Order 7 Rule 11(d), which is absent in the present matter. Reliance by Mr. Bajaj on **Raghwendra Sharan Singh** (Supra) is misconceived, for the reason, that in Raghwendra Sharan Singh a specific relief was claimed for a declaration that the defendant did not acquire title and possession on the basis of the showy gift deed dated 06/03/1981 and the plaintiff had got title and possession in the said property, along with a declaration, that the showy gift deed was not binding upon the plaintiff. In the instant matter, no such declaration has been claimed.

7. It may so happen, that ultimately the suit may fail for absence of a relief being claimed in respect of the gift deed dated 06/12/2014, by virtue of the proviso to Section 34 of the Specific Relief Act, 1963 that however, cannot be a reason or ground to non suit the plaintiff, under Order 7 Rule 11 (a) & (d) of CPC.

8. In light of above discussion, I see no merit in the application and the same is rejected. In these circumstances, there shall be no order as to costs.

(AVINASH G. GHAROTE, J.)