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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 192 OF 2017

Smt. Shashikala Rajendra Pai ...Applicant

Versus

Mr. Arjun Changa Surte & Ors ...Respondents

Mr. Vishal Kanade, i/b Mr. N.N. Thakkar, for the Applicant.

Mr. Rajiv Patil, Senior Advocate, with Dinesh Masurkar, Vinod Bhagat, i/b Nilesh Masurkar, for Respondent Nos. 1 to 4 & 6.

CORAM: Smt. Bharati Dangre, J.

DATED: 9th December 2021

P.C.:-

1. Heard learned Advocate Mr. Vishal Kanade for the Revision Applicant and the learned Senior Advocate Mr Rajiv Patil for the Respondents.

2. The Revision Application is filed by the Applicant who is original Defendant No. 1 in Regular Civil Suit No. 180 of 2010 instituted by the Plaintiff in the Court of learned Civil Judge Senior Division, Panvel. The order under challenge is passed below Exhibit-30, which is an application moved by the present Applicant under Order 7 Rule 11 of the Code of Civil Procedure, 1908 praying for rejection of plaint on the ground that the plaint lack cause of action. On the application being rejected, by recording that the suit is based on a cause of action which is pleaded and the point of limitation which is said to be canvassed for rejection of plaint being a mixed question of fact and law, the prayer is not granted.

3. The case of the Applicant being, that he is a bona fide purchaser and owner of an agricultural piece of land bearing Gat No. 39/1/A admeasuring 0-30-0 Acres situated at Village Vichumbe, Taluka Panvel, District Raigad (**the suit property**). He claimed to have purchased the suit property vide Deed of Conveyance dated 22.11.1995 from Respondent Nos. 1 to 8 for monetary consideration and accordingly his name was mutated in the land records. Respondent Nos. 1 to 8 had filed an application under Section 43 read with 32 G of the Bombay Tenancy and Agricultural Lands Act, 1948 (**B.T. & A.L. Act, 1948**) before the Competent Authority for fixing the purchase price and seeking permission to sell the property. This application was allowed on 01.11.1995 and the price of the land was fixed. Based on the permission to sell the property in favour of the Applicant, a Conveyance Deed was executed on 22.11.1995 by the erstwhile owners after completing the necessary formalities.

4. The Respondent Nos. 1 to 8 filed suit in the year 2010 seeking a declaration that the registered Deed of Conveyance dated 22.11.1995 in favour of the Applicant is a bogus and fabricated document and on its cancellation the mutation entry by which the name of the Applicant is mutated in the land records should be deleted. The Applicant was impleaded as Defendant No. 1 in the suit and the Tehsildar and the Talathi, i.e. the Revenue Authorities were impleaded as Defendant Nos. 2 and 3.

5. The present Applicant, contested the suit by filing written statement, and also moved an application under Order 7 Rule 11(a) and 1(d) of the Code of Civil Procedure, 1908, *inter alia* seeking rejection of the plaint on the ground that it was hopelessly barred by limitation and it was also barred by the provisions of the Maharashtra Land Revenue Code, 1966 since Section 158 of the Code bar the jurisdiction of the Civil Court from deciding the correctness of the revenue records / the mutation entry. The aforesaid application being rejected under the impugned order, the present Revision Application is filed.

6. Mr. Kanade, learned Counsel for the Applicant has placed reliance on the authoritative pronouncements governing the exercise of power of rejection of plaint conferred on a Court under Order 7 Rule 11(a) and 11(d). He thus placed reliance on the decision of the Apex Court in the case of ***Hardesh Ores (P) Ltd. V Hede & Co., (2007) 5 SCC 614*** and he placed reliance on the following observations:

> "33. The respondent sought rejection of the plaint by filing application under Order 7 Rule 11 CPC contending that the suit was barred by limitation on the face of it. It was contended before the High Court as also before us that the plaint has been cleverly drafted to give it the appearance of a simple suit for injunction to enforce the terms of clauses 15 and 20 of the agreement which incorporated negative covenants prohibiting mining operation by anyone else except the appellant Hardesh, or without its permission. It was submitted before us that the law is well settled that the dexterity of the draftsman whereby the real cause of action is camouflaged in a plaint cleverly drafted cannot defeat the right of the defendant to get the suit dismissed on the ground of limitation if on the facts, as stated in the plaint, the suit is shown to be barred by limitation. In *T. Arivandandam v T.V. Satyapal (1977) 4 SCC 467*, this Court observed as under: (SCC p. 470, para 5)
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> > "5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement

> of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC, taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist judge is the answer to irresponsible law suits."

34. In *ITC Ltd. v. Debts Recovery Appellate Tribunal, (1998) 2 SCC 70*, this Court noticed the judgment in *Arivandandam* and observed as under: (SCC p. 77, para 16)

> "16. The question is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 CPC. Clever drafting creating illusions of cause of

> action are not permitted in law and a clear right to sue should be shown in the plaint."

7. Reliance is also placed on the decision of the Apex Court in ***Sopan Sukhdeo Sable & Ors v Assistant Charity Commissioner & Ors., (2004) 3, SCC 137***, wherein the true meaning of the power available under Order 7 Rule 11 has been highlighted in the following words:

> "17. Keeping in view the aforesaid principles, the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order 7 Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, Order 10 of the Code is a tool in the hands of the courts by resorting to which and by a searching examination of the party, in case the court is prima facie of the view that the suit is an abuse of the process of the court, in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised.
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> 18. As noted supra, Order 7 Rule 11 does not justify rejection of any particular portion of the plaint. Order 6 Rule 16 of the Code is relevant in this regard. It deals with "striking out pleadings". It has three clauses permitting the court at any stage of the proceeding to strike out or amend any matter in any pleading i.e. *(a)* which may be unnecessary,

> scandalous, frivolous or vexatious, or, *(b)* which may tend to prejudice, embarrass or delay the fair trial of the suit, or, *(c)* which is otherwise an abuse of the process of the court.”

8. The decision of this Court in ***Tukaram Dhondiba Chopade v Andappa Genu Walekar, since deceased through LRs & Ors., 2012 (3) Mh.L.J. 150*** is also pressed into service to canvass the submission that if an order is obtained by playing fraud upon a Statutory Authority, it becomes nullity. But that question can be gone into either in an Appeal or in proceedings for setting aside the said order on the ground of fraud or in a civil suit.

9. The exercise of power under Order 7 Rule 11 of the Code of Civil Procedure, 1908 can be exercised on availability of any of the grounds contained in Rule 11. The application filed by the Applicant invoked clauses (a) and (d) of Rule 11, i.e. lack of cause of action and period of limitation. It is well settled that whether a plaint discloses a cause of action is essentially a question of fact and whether it does or does not must be found out from the reading of the plaint itself. While reading the plaint for ascertaining whether it does or does not disclose a cause of action, the plaint is to be read in its entirety. The test to be applied is whether the averments in the plaint, if taken to be correct in their entirety, a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether clauses (a) or (d) of Rule 11 of Order 7 is applicable. It is not possible to read it in piece and parcel or to cull out a sentence or a passage and to read it out of context in isolation. The substance of the pleadings and not its form will have to be focused upon and without addition or subtraction of words or change of its apparent grammatical sense, the plaint will have to be read. When the plaint in Regular Civil Suit No. 180 of 2010 is carefully read where the Plaintiffs claimed the suit property to be the ancestral property and pleaded that they were in possession of the said suit property set out in paragraph 1 of the plaint. It is pleaded in the plaint that the 7/12 extract of the suit property bear the entry of the names of the Plaintiffs. However, when the Tehsildar, Panvel attempted to enter the name of Defendant No. 1 vide mutation entry No. 1596, pursuant to an application dated 14.01.2010, the Plaintiffs raised an objection and a Complaint Case filed by them is pending before the Tehsildar. At this point of time, it was revealed to the Plaintiffs that the Defendant No. 1 had managed a bogus and illegal sale deed, it was not executed by them at any point of time and by falsifying and forging their signatures, and by striking a conspiracy with the Revenue Authority, the registration is effected. Based upon this fraudulent sale deed, the Defendant is attempting to mutate his name is the case of the Plaintiffs. It is specifically pleaded by the Plaintiffs that they had never preferred any application before the Sub-Divisional Officer seeking permission under Section 43 of the B.T. & A.L. Act for sale of the suit properties in favour of the Defendant. It is alleged that the signatures on the Conveyance Deed are not of the Plaintiffs and they are forged and the Conveyance Deed executed by impersonating them in the Office of the Sub-Divisional Officer. The pleading is to the effect that the Defendant No. 1 has mislead the Revenue Authorities by impersonating the Plaintiffs and obtaining the permission on 01.11.1995. It is also pleaded that the Plaintiff No. 1 was a minor on the date when the conveyance was executed and, therefore, it was necessary to take permission while effecting the sale deed and similarly the brother of Defendant Nos. 1, 2 and 3 was no more alive and had expired on 02.09.2007 and in 1995 he was 16 years old. However, he has been shown as a major in the sale deed. In any case, he was not the exclusive owner of the suit property and the consent of the other co-parceners was required before the conveyance was entered into is the plea taken in the plaint.

10. The cause of action has been pleaded in paragraph 15 to the effect that the Plaintiffs first learnt about the registered sale deed of the suit property, when they received a notice dated 15.07.2010 from the Tehsildar, Panvel and the cause of action is alleged to have accrued to them from that date and continues to accrue on day-to-day basis.

In the Suit the Plaintiffs, therefore, sought a declaration that the Defendant No. 1 by misleading the Sub-Registrar, Panvel, by executing bogus and false registered instrument dated 22.11.1995, in respect of the suit property, and it should be cancelled and it be declared that Mutation Entry No. 4596 made in the name of Defendant No. 1 is erroneous and the Defendant No. 2 shall be directed to cancel the same.

11. When the plaint is meaningfully read, the knowledge of the alleged Deed of Sale executed in the year 1995 is pleaded to have accrued to the Plaintiffs in the year 2010 and what was the occasion for gaining such knowledge is also pleaded. The question whether the permission granted under Section 43 of the B.T. & A.L. Act on the application filed by the Plaintiffs is real and genuine and based on their application and whether the registered Sale Deed dated 22.11.1995 is executed by them is a question of fact which can only be proved by leading evidence. The plaint on its careful reading deserve a trial and as prayed by the Defendants cannot be thrown at the threshold merely on the ground that the Plaintiffs are coming at a belated stage when the conveyance is already executed in the year 1995. The plaint, in plain words, narrated the sequence of events and attribute the knowledge about the Sale Deed executed in the year 1995 when a notice was received by the Plaintiffs for effecting change in the mutation entries pursuant to the Sale Deed and in my considered opinion this is not an illusory projection of the cause of action. The pleadings in the plaint justifying the relief in the suit deserve a thorough enquiry, in the form of a trial.

12. As far as issue of limitation is concerned, if the cause of action is pleaded on 15.07.2010, the period of limitation for filing the suit shall run from the date of the knowledge.

In any case, I am not in a position to buy the argument of Mr. Kanade that the present plaint is a case of clever drafting creating illusion of cause of action, which are surely not permitted in law but it is a case where by clear pleadings it reflect the cause of action.

The Joint Civil Judge Senior Division, Panvel has rightly refused to entertain the said application filed by the present Applicant and rejected the same. It is pertinent to note that the rejection is dated 09.11.2016 and on account of the stay granted by this Court on 25.06.2018 the proceedings in the suit are stayed. Since the suit is of the year 2010 and more than a decade has passed since its institution, the learned Trial Judge is directed to expedite the proceedings in the suit and conclude the same within a period of one year from today.

13. The Civil Revision Application is dismissed in above terms.

(**Smt. Bharati Dangre, J.**)