

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 2 OF 2016

1. Mr. Dilip Vasant Shetye,
aged 55 years, businessman, married,
Indian National and his wife,

2. Mrs. Dilip Shetye,
Wife of Mr. Dilip Vasant Shetye,
major of age, Indian National,
Both residing at H. No. Not known,
Near Ramnath Saw Mill, Sao Pedro,
Old Goa, Goa

...Applicants/Org. Defs
No. 1 & 2

V/s

1. Mrs. Angela P. Oliveira,
Wife of Late Shri. Augustinho De Oliveira,
74 years of age, Indian National,
Residing at House No. 24-A,
Salem Bhat, Mercas,
Ilhas, Goa

2. Mr. Nazir Bhat,
Son of Mohammad Abdullah,
41 years of age, married,
Business, Indian National
And his wife,

3. Mrs. Shaista Oliveira alias Bhat
Daughter of Late Mr. Augustinho De Oliveira,
47 years of age, married,
Business, Indian National
Both residing at Tangmarg,

- Dist. Baramulla, Jammu & Kashmir,
presently residing at House No. 24-A,
Salem Bhat, Mercas,
Ilhas ,Goa
4. Mr.Antonio de Oliveira,
Son of Late Mr. Augustinho De Oliveira,
57 years of age, married,
landlord, Indian National
and his wife,
 5. Mrs. Remona de Oliveira
46 years of age, married,
housewife, Indian National
Both residing at House No. 24-A,
Salem Bhat, Mercas,
Ilhas, Goa
 6. Mrs. Carmo Antonieta de Oliveira
Wife of Late Mr. Emidio de Oliveira,
Daughter of Late Mr. Augustinho De Oliveira,
55 years of age, married,
service, Overseas Citizen of India
 7. Miss. Solfrida de Oliviera,
daughter of Late Mr. Emidio de Oliveira,
29 years of age, spinster,
service, Overseas Citizen of India
 8. Miss. Elfrida de Oliviera,
daughter of Late Mr. Emidio de Oliveira,
27 years of age, spinster,
service, Overseas Citizen of India
plaintiff no. 6,7 & represented by
their Attorney the Plaintiff no. 4
 9. Ms. Martha Mercas De Oliveira,

daughter of Late Mr. Augustinho De Oliveira,
52 years of age, Divorcee,
housewife, Indian National
Residing at House No. 24-A,
Salem Bhat, Mercês,
Ilhas, Goa

...Respondents/Org. Plaintiffs

10. Mrs. Aida Efregina Sebastiana Pereira,
wife of Late Mr. Cirilo Periera,
72 years of age, widow,
landlady, Indian National,
11. Mr. Edward Carmo Judas Pereira,
son of Late Mr. Cirilo Periera,
45 years of age, married,
business, Indian National
and his wife,
12. Mrs. Rosana Pereira,
wife of Mr. Edward Carmo Judas Pereira,
45 years of age, married,
business, Indian National,
the defendant no. 3 to 5
residing near Our Lady of Carmel Chapel,
Carmichem Bhat, Mercês, Ilhas, Goa
13. Mrs. Alzira Soares,
Wife of Late Shri. Silvio Soares,
70 years of age, widow,
landlady, Indian National,
14. Miss. Janita Lourencinha Soares,
Daughter of late Shri. Silvio Soares,
52 years of age, spinster,
service, Indian National,

15. Mrs. Sulana Santana Soares e
Braganza alias Sulana Braganza,
Daughter of late Shri. Silvio Soares,
45 years of age, spinster, service,
Indian National and her husband
16. Mr. Francis Branganza,
47 years of age, married,
business, Indian National,
the defendant nos. 6 to 7
residing of 1st Banglo,
Nr. CMM Showroom, wadi,
Merces, Ilhas, Goa
- ...Respondents/Org. Defs
3 to 10

Shri I. Agha, Ms. V. Fernandes and Mr. Ketan Morajkar, Advocates for the Applicants.

Ms. Asha Desai with Ms. N. Volvoikar, Advocates for Respondent Nos.1 to 9 and 13 to 16

CORAM:	BHARAT P. DESHPANDE, J.
RESERVED ON:	8th September, 2022
PRONOUNCED ON:	14th September, 2022

JUDGMENT:

The applicants herein are the original defendant Nos.1 and 2 in Regular Civil Suit No.34/2015/D. Respondent Nos.1 to 9 are the original plaintiffs. Respondent Nos.10 to 16 are the remaining defendants.

2. By way of revision, the applicants are challenging the impugned order dated 08/01/2016 whereby their application filed at Exh.26 under Order VII Rule 11 (d) of CPC came to be rejected.

3. Heard learned Counsel Shri I. Agha appearing for the applicants and the learned Counsel Ms. Asha Desai appearing for respondent Nos.1 to 9 and 13 to 16. The only aspect which requires consideration is whether the cause of action as shown in the plaint is illusory only to bring other reliefs which were already time-barred.

4. The learned Counsel Shri Agha, strenuously urged that on a plain reading of the plaint along with documents relied upon by the plaintiffs, shows that the suit filed for injunction and declaration is clearly barred by law of limitation. In this respect he submitted that the learned Trial Court in the impugned order though accepted that the prayers regarding declaration are time-barred, however, observed that the plaint cannot be rejected in part as plaint discloses a cause of action with regard to a claim of injunction which is not a consequential relief. He, therefore, submitted that the learned Trial Court completely misconstrued the observations of the Apex Court in the case of ***Hardesh Ores (P) Ltd v/s. Hade and Company***¹. He placed reliance on the decision of ***Shri***

¹ (2007)5 SCC 614

*Jahangir @Jawahar and others v/s. Smt. Maureen de Sequeira*² and in the case of *T. Arvindandam v/s. T.V. Satyapal and Another*³.

5. *Per contra*, the learned Counsel appearing for the respondents Ms. Asha Desai forcefully submitted that the learned Trial Court has considered all the pleadings and came to the right conclusion and there is no need for any interference. She submitted that the respondents are the co-owners and therefore a declaration is sought with regard to co-ownership and for that purpose, the cause of action arose in the year 2015 as claimed in paragraph No.30. She, therefore, submits that the respondents/plaintiffs cannot be non-suited at the initial stage with regard to their valuable right of co-ownership of the suit property.

6. Respondent Nos.1 to 9 filed a suit against the present appellants who are defendant Nos.1 and 2 and others bearing Regular Civil Suit No.34 of 2015 before Senior Civil Judge at Panaji claiming therein permanent injunction, declaration and cancellation/declaration of Sale Deed, Deed of rectification and Will as null and void.

7. In nutshell, it is the pleading in the suit that the plaintiffs along with defendant Nos.3 to 9 are the legal representatives of late Eduardo Zeferino Xavier Pereira and late Smt. Marcilia Oliveira Pereira. The said

² 2017(2) Goa L.R.168 (Bom)(PB)

³ (1977) 4 SCC 467

Eduardo Zeferino Xavier Pereira and his wife owned various properties which include property bearing Survey No.142/1 of Village Murda, Tiswadi, Goa. Late Eduardo Zeferino Xavier Pereira expired on 02/06/1949 and accordingly succession open and right to his estate devolved upon his three daughters namely plaintiff No.1, defendant No.3 and defendant No.6. Therefore, the plaintiffs claimed that they along with defendant Nos.3 to 9 are the co-owners of the property bearing Survey No.142/1, 143/1 of Village Murda, Tiswadi, Goa along with other properties left by late Eduardo Zeferino Xavier Pereira and his wife.

8. It is further claimed in the plaint that vide Sale Deed 09/01/1998 and Deed of rectification dated 10/07/1998, defendant Nos.3 to 5 purportedly sold the property bearing survey No.142/1 admeasuring 6223 sq.mts. and part of property bearing survey number 143/ 1 admission in 2656 sq. metres to defendant No.1. The plaintiffs claim that the said property described in the sale deed has to be considered as suit property for the suit. The plaintiffs were not aware of the execution of the Sale Deed.

9. It is further contented in the plaint that somewhere on 16/09/1982 Smt. Marcilia Oliveira Pereira made a Will on account of

her disposable share bequeathing certain properties mentioned therein and including the property bearing Survey No.143/1 in favour of defendant No.3 and her late husband Shri Cirilo Pereira. The plaintiffs were not aware about such Will. Smt. Marcilia Oliveira Pereira expired on 13/12/1986. Somewhere in the year, 2000 inventory proceedings bearing No. 8/2000/B were filed by defendant No.4 upon the death of Smt. Marcilia Oliveira Pereira and at that time the plaintiffs learnt about the Will executed by late Marcilia Oliveira Pereira in favour of defendant No.3. Thus, paragraph 9 of the plaint shows that the plaintiffs became aware of the Will dated 16/09/1982 in the year 2000 when the inventory proceedings were filed.

10. Further, it is disclosed in the plaint that in order to avoid conflict between family members the plaintiffs did not contest the inventory proceedings and the same came to be settled/disposed of by filing consent terms vide order dated 01/02/2000, copy of which is produced along with the plaint at Exh.E. It is further contended in the plaint that in the consent terms plaintiffs along with defendant Nos.3 to 9 were considered as co-owners even though a Will was executed by Smt. Marcilia Oliveira Pereira with regard to her disposable share.

11. Paragraph 13 of the plaint further shows that irrespective of the orders passed in the inventory proceedings, the plaintiffs and defendant Nos.3 and 9 are the co-owners in possession of the suit property and other properties left behind by late Eduardo Zeferino Xavier Pereira and late Smt. Marcilia Oliveira Pereira.

12. The plaint further discloses in paragraph 14 that somewhere on 24/10/2000 defendant No.6 and her late husband Shri Silvio A.F. Soares filed a Civil Suit bearing R.C.S. No.154/2000/C in the Court of Civil Judge Junior Division at Panaji against the present applicants and other co-owners including the plaintiffs claiming therein that the present applicants were illegally and unauthorisedly dumping mud in the suit property on the strength of a Deed of Sale dated 09/01/1998 executed by defendant Nos.3 to 5 in their favour. During the pendency, Silvio expired and the present defendant Nos.7 to 9 were brought on record as legal representatives. A copy of the plaint in R.C.S. No.154/2000/C is also attached along with the plaint at Exh.F. In that suit, a prayer for declaration of Sale Deed dated 09/01/1998 as null and void was made along with a grant of permanent injunction restraining the present applicants and others from interfering in the suit property.

13. The plaintiffs further claimed in paragraph 16 that when the said suit was at the stage of evidence, it was dismissed for default vide order dated 01/10/2013. It is the contention of the plaintiffs that there is every reason to believe that the defendant Nos.6 to 9 who were the plaintiffs in the suit bearing RCS No. 154/2000/C are in hand in glove with the defendant Nos.1 to 5 in the present suit and thereby allowing the suit to dismiss for default. Further, it is averred in paragraph 17 of the plaint that to the best of knowledge of the plaintiffs neither an appeal was preferred nor an application for restoring of the said suit was filed in connection with R.C.S.No.154/2000/C which was dismissed for default on 01/10/2013.

14. Pleadings further show in paragraph No.18 that somewhere in October, 2003 defendant No.1/ applicant herein filed a Civil Suit bearing No.126/2003 against the plaintiffs and defendants No.3 to 9 for declaring inventory proceedings No.8/2000/B so far as listing and allotting suit property to the plaintiffs and Defendant Nos.3 to 9 herein as illegal, null and void and not binding on them. In that suit, defendant No.1/applicant herein claimed the right to entire property bearing Survey No.142/1 and portion admeasuring 2656 square metres of Survey No.143/1 based on the Sale Deed dated 09/01/1998 and the

rectification deed dated 10/07/1998. The record and proceedings of RCS No.126/2003 is also annexed along with the plaint at Exh.G.

15. It is further claimed in the plaint paragraph 19 that the defendant Nos.3 to 5 being the vendors in the Sale Deed dated 09/01/1998 claimed right to the entire property bearing Survey No.142/1 and 143/1 based upon the Will dated 16/09/1982. In paragraph No.21 of the plaint, the plaintiffs claimed that the said Will dated 16/09/1982 is null and void to the extent it purports to bequeath defendant No.3 and her late husband's entire properties mentioned in the said, Will. It is their contention that defendant Nos.3 to 5 was never sole and exclusive owners of the suit property however they were only the co-owners along with the plaintiffs and therefore defendant Nos.3 to 5 could not have sold/transferred the entire suit property or a specific portion in favour of defendant No.1. On this premise the plaintiffs claimed that the Said Deed dated 09/01/1998 executed by defendant Nos.3 to 5 in favour of defendant Nos.1 and 2 is illegal, bad in law and null and void and therefore cannot affect the right of the plaintiff of co-ownership.

16. The plaintiffs further claimed that they along with defendant Nos.3 to 9 are jointly owing and possessing the suit property which is not partitioned by metes and bounds.

17. The cause of action for filing of suit is found in paragraph 26 of the plaint wherein the plaintiffs claimed that on 13/03/2015 at around 9.30am defendant No.1 along with one labour and defendant No.4 tried to trespass into the suit property and tried to fence the suit property with the barbed wires fencing without obtaining permission of the plaintiffs. The plaintiffs immediately objected and did not allow defendant No.1 and his labour to fence the suit property. Accordingly, defendant No.1 abused plaintiff No.4 and threatened and therefore left the scene. On this count, the plaintiff claimed that they apprehend that defendant Nos.1 and 2 in collusion with defendant Nos.3 to 9 may trespass or interfere in the suit property and accordingly claimed in paragraph 30 that cause of action arose on 13/03/2015.

18. Prayers in paragraph 36 are as under:

(A) By way of Permanent Injunction the Defendants their agents, servants or any other person acting on their behalf be restrained from trespassing and/or interfering and/or changing the nature of the Suit Property or any part thereof in any manner whatsoever.

(B) For Declaration that the Plaintiffs are the co-owners of the properties bearing Survey Nos.142/1 and 143/1 of village, Murda, Tiswadi, Goa as also all other properties left behind by

Lare Shri Eduardo Zeferino Xavier Pereira and Late Marcilia Oliveira Pereira.

(C) The Deed of Sale dated 09/01/1998, Registered under No.70 at Pages 146 to 167 of Book No.I, Volume 650, dated 12/01/1998 as also the Deed of Rectification dated 10/07/1998 Registered under No.1252 at Pages 101 to 110 of Book No.I, Volume 696, dated 14/07/1998 be declared as null and void and the Sub-Registrar of Tiswadi be directed to cancel the same.

(D) The Will dated 16/09/1982, Registered in the Notary Book No.54, at Pages 79 to 82v of “Wills” to the extent that it refers to the entire properties, be declared as null and void and the Sub-Registrar of Tiswadi be directed to cancel the same.

(E) During the pendency and final disposal of this suit, the Defendants, their agents, servants or any other person acting on their behalf be restrained by way of Temporary Injunction from trespassing and/or interfering and/or changing the nature of the Suit Property or any part thereof in any manner whatsoever.

19. On the basis of such contentions, defendant Nos.1 and 2 appeared and filed an application for rejection of the plaint under Order VII Rule 11 CPC claiming therein that main reliefs of a declaration are barred by limitation and other consequential reliefs follow from it and therefore, the suit is barred by limitation.

20. A reply was filed on behalf of the plaintiffs opposing such an application. The learned Trial Court after hearing both the sides passed impugned order wherein it is clearly observed that the suit as far as prayers of declaration at prayer clauses b, c and d are concerned is barred by limitation. However, the learned Trial Court observed that since the prayer of injunction is not a consequential relief and as plaint discloses the cause of action, it cannot be partly rejected. Therefore, the application at Exh.26 came to be rejected.

21. The learned Counsel Shri I. Agha appearing for the applicant strongly contended that the learned Trial Court misconstrued the order of Apex Court in the case of ***Hardesh Ores (P) Ltd***(supra). He then placed reliance on the observations of the Apex Court in the case of ***T. Arvindandam***(supra) and more specifically para 5 which reads thus:

“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 complaints. 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 VII, Rule

11 C.P.C. 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 X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr.XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi : "It is dangerous to be too good."

22. The above observations and more particularly with regard to clever drafting creating an illusion of a cause of action on the face of the pleadings, has to be identified at the first hearing and such illusion of cause of action must be nip it in the bud at the first hearing.

23. In the case of ***Hardesh Ores (P) Ltd***(supra), the Hon'ble Apex Court observed in paragraphs 25, 33 and 34 as under :

"25. The language of Order VII Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr. Nariman did not dispute that "law" within the meaning of clause (d) of Order VII Rule 11 must include the law of limitation as well. It is well settled that whether a plaint discloses a cause of action is essentially a

*question of fact, but whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made 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 clause (d) of Rule 11 of Order VII is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. As observed earlier, the language of clause (d) is quite clear but if any authority is required, one may usefully refer to the judgments of this court in *Liverpool & London S.P. & I Association Ltd. Vs. M.V. Sea Success I and another* (2004) 9 SCC 512 and *Popat and Kotecha Property Vs. State Bank of India Staff Association* (2005) 7 SCC 510.*

33. The respondent sought rejection of the plaint by filing application under Order VII 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- Haradesh, 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 Vs. T.V. Satyapal and another 1977 (4) SCC 467 this Court observed as under :-

"5. We have not the slightest hesitation in condemning the petitioner for gross abuse of the process of the court repeatedly and unrepentently 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 VII Rule 11, C.P.C., 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 X, C.P.C. An activist Judge is the answer to irresponsible law suits."

34. In I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others: 1998(2) SCC 70 this Court noticed the judgment in Arivandandam and observed as under (SCC o.77, Para 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."

24. In the case of ***Shri Jahangir @ Jawahar and others***(supra), this Court observed in paragraph 14 as under:

"14. It is now well settled that for the purposes of the determination of the question as to whether, the plaint is liable to be rejected under Order VII, Rule 11(d) of CPC, the Court has to confine to the allegations in the plaint and in the documents produced and relied upon by the plaintiff. This Court in the case of SNP Shipping Services Pvt. Ltd. and others v/s. World Tanker Carrier Corporation, 2000 (2) Mh.L.J. 570 has held that when the plaint is based on a document, the said document can also be looked into, while dealing with the application under Order VII, Rule 11(d) of CPC. There cannot be any manner of dispute that limitation is a mixed question of law and fact. However, that does not mean that in every case, it is a question involving disputed facts. In other words, there may be cases where, the facts on the basis of which, the issue of limitation has to be decided are either admitted, or are undisputed or are clearly borne out of record. The fact that the plaint in the given case can be rejected as being barred by limitation, would itself indicate that there may be a case where, issue of limitation may not necessarily depend on facts, which are disputed, requiring trial, else otherwise, the plaint could never be rejected as being barred

by limitation. Thus, the submission that limitation being a mixed question of law and fact, the plaint cannot be rejected, to my mind cannot be accepted.”

25. Keeping in mind the above settled position of law laid down by the Apex Court, it needs to be observed that Order VII Rule 11 (d) of CPC permits the Court to reject the plaint when on the face of it, it is observed that the suit is barred by law of limitation. It is also well settled that while considering pleadings in the plaint, documents enclosed and referred to in the pleadings are also required to be read as a whole so as to come to the conclusion.

26. The word "right to sue" ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is, the right to prosecute, to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is filed. Thus, the right to sue is directly linked with the relief and such proceedings must be instituted within the period of limitation as provided in the Limitation Act. For seeking a declaration of any right, title or interest in the suit property, the period of three years is provided, which starts/began to run, when the right to sue first accrues.

Therefore, the wording in Article 58 of the Limitation Act as far as the period begins to run is when the right to sue "first accrues". Once the limitation starts, the same cannot be interrupted and the suit has to be instituted within the specified time.

27. It is settled that a plaint has to be read as a whole together with documents relied upon with it.

28. Coming back to the impugned order dated 08/01/2016, it is clear from the observations of the learned Trial Court in paragraph No.20 that the reliefs in prayer clauses 'b', 'c' and 'd' are time barred as the plaintiff knew about the Will executed on 16/09/1982, the Sale Deed executed on 09/01/1998, somewhere in the year 2000 itself. Admittedly, there is no cross-objection filed on behalf of the original plaintiffs/respondent Nos.1 to 9 herein challenging the findings of the learned Trial Court about the above facts and observations. Therefore, such findings of the learned Trial Court with regard to prayer clauses 'b', 'c' and 'd' are final and binding on respondent Nos.1 to 9.

29. As discussed earlier, so called cause of action which is claimed in the suit is found in paragraph Nos.26 and 30 of the plaint qua a prayer for a permanent injunction. It is the contention of the plaintiffs that on 13/03/2015 at around 9.30 am defendant No.1 along with one labourer

and defendant No.4 tried to trespass into the suit property and tried to fence the suit property with barbed wire fencing. Plaintiff No.4 immediately objected and therefore, the said defendants left the spot. We have to see whether above so called cause of action is only illusory in nature so as to bring the suit within limitation.

30. Along with the plaint a copy of the Civil Misc. Application No. 274 of 2000 in R.C.S. No.154 of 2000 is placed on record and plaint paragraph Nos.14 to 17 refer to such proceedings filed in the Court of Civil Judge Junior Division at Panaji.

31. Order was passed by the learned Civil Judge Junior Division, Panaji in Civil Misc. Application No. 274 of 2000 arising out of R.C.S. No.154 of 2000 dated 08/07/2004. Admittedly, the plaintiffs were parties to the said suit as defendant Nos.5 to 14. While deciding the said application for grant of temporary injunction filed by Shri Silvio A.P. Soares and two others, respondents No.13 to 15 in the present proceedings, the learned Civil Court observed in paragraph No.12 thus:

“The plaintiffs have failed to establish prima facie case. The balance of convenience is in favour of defendant No.1. Considering the factum of possession that the defendant No.1 is in possession of the suit plot, the balance of convenience is in favour of defendant No.1. A transaction of sale whether it is legal

or illegal has to be established by leading evidence. Grave irreparable loss and injury will be caused to defendant No.1 if the injunction is granted.”

32. Defendant No.1 in R.C.S. No.154 of 2000 is applicant No.1 in this revision petition. Thus a Civil Court wherein present respondent Nos.1 to 9 were parties, observed that applicant No.1 herein is in possession of the suit property. Admittedly, this order was never challenged. Subsequently, the said suit was withdrawn. However, a finding in favour of the present applicant remained as a part of the record. Therefore, once a Court of competent jurisdiction hold that the present applicant is in possession of the suit property wherein the present respondent Nos.1 to 9 were parties to it and that such order becomes final for want of any appeal, it does not lie in the mouth of the present respondents to claim in the subsequent proceedings that they are in possession of the suit property. Thus pleadings in the plaint and more particularly paragraph No.26 of the plaint are specifically contrary to the orders passed by the Civil Court in the year 2004 itself. These proceedings are part and parcel of the proceedings as observed earlier and more specifically from paragraph Nos.14 to 17 of the plaint as disclosed above.

33. Paragraph 18 of the plaint further shows that somewhere in October 2003 defendant No.1/applicant herein filed a Civil Suit bearing No.126 of 2003 against the respondents claiming therein that inventory proceedings bearing No.8 of 2000 be declared null and void insofar as the listing of the suit property in it and allotting it to the interested parties.

34. Paragraph 19 of the plaint further shows as under:

“The plaintiffs state that in the said Deed of Sale, the Vendors therein i.e. the Defendant Nos.3 to 5 herein claim right to the entire properties bearing Survey No.142/1 and 143/1 i.e. the Suit Properties based upon the aforesaid Will dated 16/09/1982.”

35. Thus from the pleadings itself, one can gather that the plaintiffs were having knowledge of all the proceedings, the Will executed way back in the year 1982 and the Sale Deed executed on 09/01/1998 together with the fact that the Civil Court in its order dated 08/07/2004 observed that the defendant No.1 is in possession of the suit property on the basis of the Sale Deed. Thus contention raised in paragraph 26 of the plaint regarding the alleged cause of action is clearly on the basis of clever drafting and showing the illusory cause of action so as to bring the suit within limitation so far as claiming permanent injunction is

concerned. However, such pleadings, on the face of it, coupled with the documents attached to the plaint clearly show that it is only an illusory cause of action created and there is no actual cause of action accrued to the plaintiff to allow such claim including the claim for a permanent injunction. The right to sue depends only on the cause of action which arises on actual happenings including threats to the right of the aggrieved party. When the plaintiff knew that in the year 2004 a Civil Court had observed against them stating that defendant No.1 is in actual possession of the suit property, so-called cause of action shown in paragraph 26 of the plaint has to be treated as an illusory cause of action. When defendant No.1 is considered to be in possession of the suit property by a Civil Court in the year 2004 itself, there was no occasion for him to trespass as alleged in the suit property on 13/03/2015. The aspect of trespass can be considered only if the person is not in actual possession of the suit property. When defendant No.1 was adjudged to be in possession of the suit property in the year 2004 itself and there is no subsequent order of any Court of law observing otherwise, such position has to be considered in favour of defendant No.1.

36. The learned Counsel for the applicant was therefore right in submitting that the prayer of injunction and the cause of action claimed

in paragraph 26 of the plaint is only a camouflage action on the part of the plaintiff so as to bring the suit within limitation. It is therefore necessary for the Court to actually verify the pleadings together with documents relied upon in the plaint so as to come to the meaningful consideration of such pleadings. The Court should not close its eyes only on finding some of the sentences or illusory cause of action in the plaint. It has to be a meaningful and substantive cause of action in order to consider whether such prayer is within limitations.

37. It is needless to state that the duty of the Court is to consider the entire plaint together with the documents relied upon in the plaint so as to verify a meaningful construction of the pleadings and not only to verify the sentence in the pleadings regarding accrual of the cause of action. Institution of the suit is only when the right asserted in the suit is infringed in a particular way or when there is a clear and unequivocal threat to infringe that right. In the present suit the entire assumption of the plaintiff is that they are in possession of the suit property even though the pleadings and documents speak otherwise. Therefore mentioning a date and an event in the plaint which is contrary to the facts, cannot be accepted by the Court as the cause of action for instituting the suit even though the facts on the face of it show otherwise. In other words, if such interpretation is accepted, each

person approaching Court would mention in the pleadings about the illusory cause for action and the Court will have to ignore the application under Order VII Rule 11 (d) CPC on considering such pleadings though prima facie it could be observed that such statement is only creating the illusory cause of action. If that is so, the provision under Order VII Rule 11(d) CPC would be rendered meaningless. The Court is duty bound to see the actual cause of action and whether it is supported by proper pleadings and documents.

38. Having said so, to my mind pleadings in paragraph 26 of the plaint are clearly seen as creating an illusory cause of action by way of clever drafting so as to bring the suit and the prayer for an injunction within a period of limitation.

39. In other words, a meaningful, no formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, the Court should exercise its power under Order VII Rule 11 (d) CPC taking care to see that the ground mentioned therein is fulfilled.

40. Thus on a careful and meaningful observation/reading of the plaint and the documents enclosed therein, it is a clear case of creating the illusory cause of action to file the suit when in fact no such clear and

actual cause of action accrued to the parties on that day as observed earlier. Hence, the revision application must succeed.

O R D E R

- i. The impugned order dated 08/01/2016 is therefore quashed and set aside.
- ii. The application filed by the applicants for rejection of plaint under Order VII Rule 11(d) CPC at Exh.26 in RCS No.34 of 2015 stands allowed thereby rejecting the plaint as time barred. Consequently, RCS No.34 of 2015 stands disposed of as barred by limitation.
- iii. Since the present applicant was dragged into vexatious and meaningless, time barred litigation respondent Nos.1 to 9 who are the plaintiffs in Civil Suit No.34 of 2015 are directed to pay costs of the said proceedings quantified to Rs.10,000/-.

BHARAT P. DESHPANDE, J.

MEENA
VISHAL
BHOIR



Digitally signed by
MEENA VISHAL
BHOIR
Date: 2022.09.14
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