

SA Pathan

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

CIVIL REVISION APPLICATION NO.875 OF 2014

Kisan Bayaji Mahadik	... Applicant
V/s.	
Yashwant Jaywant Kanase & Ors	... Respondents

Mr. Abhijit P. Kulkarni, for Applicant.

Mr. Tushar N. Sonawane a/w Ms. Pooja Satpute, for
Respondents.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 8, 2023

P.C.:

1. Defendant No.4 is challenging order dated 25 March 2014 passed by the Trial Court rejecting application under Order, Rule 11(a), (d) of the Code of Civil Procedure, 1908 (for short 'CPC') filed by the applicant.

2. Respondent No.1 filed Regular Civil Suit No.593 of 2012 seeking a declaration that the plaintiffs be declared as legal representatives of suit property; lease deed executed by defendant No.1 on 18 May 1934 and 1 July 1939 in favour of Marshland Price & Company Ltd be declared as illegal and sale deed dated 22 June 1933 as illegal, forged and void. Moreover, document dated 19 April 1932 executed by Bala Pimpla Wani in favour of father of defendant be declared as null and void and further injunction

restraining defendant No.4 from creating third party rights.

3. From the averments in the plaint, it appears that on 28 February 1930 the predecessor of plaintiff Dhondi executed mortgage deed in favour of predecessor of defendant No.4 as regards Survey No.82/1D. It is further alleged that Dhondi died on 15 March 1933. However, it is shown that Dhondi executed sale deed on 22 June 1933 in favour of predecessor of defendant. Rest of the averments in the plaint are in relation to illegality of transaction.

4. According to the plaintiff, sale deed dated 22 June 1933 had been executed by a dead person (Dhondi) is void.

5. Defendant No.4 filed an application under Order 7, Rule 11 of CPC contending that there is no cause of action and the suit is barred by limitation.

6. The Trial Court rejected the application holding that the facts of the case is the issue of limitation involved, mixed question of law and fact.

7. Learned Advocate for the applicant submitted that prayer under clause (b) of the plaint seeks a declaration that the documents executed in the year 1934, 1939, 1933, 1932 were illegal, forged and void. Therefore, suit filed in the year 2012 is *ex-facie* barred by limitation.

8. It is well settled that, for the purpose of considering application under Order 7, Rule 11 of CPC, the Court needs to presume that the averments in the plaint are true. The plaint

contains an averment that predecessor of plaintiff Dhondi died on 15 March 1933. However, the document dated 22 June 1933 is shown to have been executed by Dhondi. If, the averments made in the plaint in relation to death of Dhondi and sale deed dated 22 June 1933 are proved to be correct, the document of sale deed will be void.

9. The Apex Court in the case of **Prem Singh & Ors Vs Birbal & Ors.**, reported in (2006) SCC 353 has held that if the document is void, there is no need of setting aside such document and provisions of Limitation Act would have no application at all in the event the transaction is held to be void.

10. With the result, it is necessary for the Trial Court to adjudicate issues involved by granting opportunity of hearing to both sides to adduce evidence to prove the fact as to whether Dhondi died on 15 March 1933 and the effect of death of Dhondi, if any, on the sale deed dated 22 June 1933.

11. Once, it is shown that part of the prayer made in the plaint needs to be decided on merits, remaining part of the plaint cannot be dismissed under Order 7, Rule 11 of CPC as it is now well settled in view of judgment of Apex Court in the case of **Sopan Sukhdeo Sable & Ors vs Assistant Charity Commissioner & Ors**, reported in 2004 (3) SCC 137 that the Court has no power of rejection of part of the plaint.

12. The recent judgment of Apex Court in the case of **Kum. Geetha, D/o Late Krishna & Ors Vs Nanjundaswamy & Ors**, in Civil Appeal No.7413 of 2023 reiterates the view that it is not

permissible to reject plaint qua any particular portion of a plaint and the plaint as presented must proceed as a whole can be rejected as a whole not any part. Therefore, in my opinion, the application filed by defendant No.4 for rejection of plaint was rightly rejected. There is no merit in the application.

13. The civil revision application is rejected. No costs.

(AMIT BORKAR, J.)