

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

WRIT PETITION NO. 2547/2018

ASHA W/O SADASHIV PAHURKAR AND OTHERS
VS
BHANUDAS DEVIDAS MALI AND ANOTHER

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Narendra Dhoot h/f. Mr. N.R. Saboo, Advocates for the
petitioners
Mr. A.V. Bhide, Advocate for respondent no. 1
The respondent no. 2 is served.

CORAM : A. S. KILOR, J.

DATED : 26/06/2023

Heard.

2. The order below Exh. 80 rejecting an application, moved by the plaintiffs under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short the "CPC") for rejection of a counter-claim, passed by the learned Joint Civil Judge Junior Division, Shegaon, is under challenge in this writ petition.

3. The petitioners filed a suit for declaration, partition and for damages which is Regular Civil Suit No. 01/2007. Thereafter, the written statement was filed by the respondents.

4. The learned Trial Court passed the order below Exh. 44 striking out the defence of the respondent no. 1 under the provisions of the Order XXXIX Rule 11(1) of the CPC. The said order of striking out the defence was upheld by the learned Appellate Court and accordingly, the writ petition was filed which was allowed in favour of the respondent no.1 vide judgment dated 27.07.2015 passed by this Court in Writ Petition No. 6209/2012. In the meantime, the respondent no.1 filed the counter-claim which has been objected by filing an application under Order VII Rule 11 by the plaintiffs and thereby, sought rejection of the counter-claim on three grounds that no cause of action has been disclosed, suit is under valued and the counter-claim is barred by limitation.

5. The learned trial Court vide impugned order below Exh. 80 dated 04.01.2018 held that the cause of action is shown by the respondent no. 1 in the counter-claim and, therefore, it cannot be rejected on the ground that there is no cause of action disclosed in the counter-claim.

6. Similarly, the ground that the counter-claim is under valued has also been held in negative by recording reasons in paragraph 10 of the impugned order.

7. As far as the limitation is concerned, the learned trial Court has observed that since, it is a mixed question of fact and law and the same will be decided after recording the

evidence. Thus, the point of limitation is not concluded and kept open to be considered after recording of the evidence.

8. The perusal of the counter-claim and the cause of action shown in the counter-claim, I do not find any infirmity committed by the learned trial Court in recording that the respondent no. 1 has disclosed the cause of action in the counter-claim.

9. The Court has further rightly held that in the counter-claim since the prayer is for permanent injunction, declaration as to ownership and possession for agricultural land and a house property, Section 6 (iv)(d) and Section 6(v) of the Maharashtra Court Fees Act, 1959 (for short the “Act of 1959”) would apply.

10. The learned trial Court has thus held that the court fee has been paid as per the rule. Hence, there is no infirmity committed by the learned trial Court in recording the findings on the first two objections as regards the non-disclosure of the cause of action and under valuation of the counter-claim.

11. As regards last issue of limitation, the learned trial Court has kept the said issue to be decided after recording the evidence.

12. In the circumstances, I do not find any infirmity committed by the learned trial Court in rejecting the

application under Order VII Rule 11 of the CPC filed by the plaintiffs. Accordingly, the writ petition is **dismissed**.

13. At this stage, Mr. Bhide, the learned Counsel for the respondent no. 1, prays to expedite the suit.

14. The suit is pending since 2007 and for last 5 years the suit was not proceeded because of the stay granted by this Court vide order dated 27.04.2018.

15. In the above referred circumstances, the learned trial Court is directed to expedite the suit.

JUDGE