



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO.62 OF 2024

Praveen Kedarnathji Kabra

...Applicant

Versus

1. Rahul Sureshlal Bassaiye,

2. Shantibai Radhakishan Bassaiye,

3. Vinod Radhakisan Bassaiye,

4. Manoj Radhakisan Bassaiye,

5. Ravi Radhakisan Bassaiye,

6. Sankarlal Sandulal Bassaiye,

6A. Ajay Shankarlal Bassaiye,

7. Mohanlal Babulal Bassaiye.

...Respondents

Adv. A. S. Bajaj h/f. Mr. N. S. Jaju for Applicant.

Adv. Mukul Kulkarni h/f. Mr. G. M. Sharma for Respondent No.1.

Mr. M. K. Deshpande for Respondent Nos.2 to 5.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 20th DECEMBER 2024.

JUDGMENT:-

1. The Applicant/Original Defendant No.1 impugns the order dated 8th April 2024, passed by learned 20th Civil Judge, Junior Division, Aurangabad, below Exhibits 28 and 30 in Regular Civil Suit No.28 of 2024, thereby rejecting applications seeking rejection of plaint under Order VII Rule 11 (b)(c)(d) of the Code of Civil Procedure,

1908. [Hereinafter parties are referred as per original status in the suit for brevity and convenience].

2. The Respondent No.1/Original Plaintiff instituted Regular Civil Suit No.28 of 2024 before learned Civil Judge, Junior Division at Aurangabad seeking relief of declaration that sale deed bearing No.2822 dated 9th July 2012 and sale deed bearing No.9411 dated 22nd November 2010 executed by Defendant Nos.2 to 5 in favour of Defendant No.1 (present Applicant) are illegal, null and void, ab initio and not binding upon Plaintiff. Further to restrain Defendants from interfering in possession of Plaintiff and his family members over suit properties.

3. The Defendants appeared in the suit, filed written statement so also filed applications below Exhibits 28 and 30, seeking rejection of plaint under Order VII Rule 11 (b) (c) & (d) of Code of Civil Procedure, 1908 contending that suit is under valued, cause of action shown in the suit is illusory and suit is barred by limitation in view of Article 58 read with 133 of the Limitation Act. Both applications were contested by Plaintiff as per say. The Trial Court after hearing parties rejected both applications by common order dated 8th April 2024. Hence, Defendant No.1 filed this civil revision application under Section 115 of Code of Civil Procedure, 1908.

4. Mr. A. S. Bajaj, learned Advocate appearing for Applicant restricts his submissions on the point of limitation and contends that plaintiff ought to have been rejected at threshold under Order VII Rule 11 (d) of Code of Civil Procedure, 1908. Mr. Bajaj would submit that Plaintiff is seeking declaration in respect of sale deeds dated 22nd November 2010 and 9th July 2012 executed by Defendant Nos.2 to 5 in favour of Defendant No.1 in respect of suit properties. Plaintiff has also claimed consequential relief of perpetual injunction. He would submit that both the sale deeds are registered documents, therefore, it would have to be presumed that everyone has notice of execution of sale deeds. Secondly, Plaintiff himself relied on an order dated 13th December 2013 passed by City Survey Officer, Aurangabad which depicts that mutation based on impugned sale deeds was subject matter of challenge before the City Survey Officer. The father of Plaintiff; namely, Sureshlal Sandulal Bassaiye participated in said proceedings along with his brothers. He submitted his representation assailing mutation based on the impugned sale deeds. The objection raised by father of Plaintiff and his brothers was sustained. Consequently, the mutation entries were restored to its original position as on 4th July 1983. Mr. Bajaj would, therefore, urge that on the basis of documents appended to plaint, it is abundantly clear that Plaintiff's father was aware about execution of sale deeds. He objected to the mutation effected in city survey record but never raised

challenge to sale deeds by filing any suit. Plaintiffs have raised illusory cause of action and filed present suit which is apparently barred by limitation in view of Article 58 read with 113 of Limitation Act. In support of his contentions, he relies upon judgments of the Supreme Court of India in case of *Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by L.Rs.*¹, *Padhiyar Prahladji Chenaji Vs. Maniben Jagmalbhai & Ors.*² and *Dahiben Vs. Arvinbhai Kalyanji Bhanushali (Gajra)*³.

5. Per contra, Mr. Mukul Kulkarni, learned Advocate appearing for Respondent No.1/Plaintiff supports the impugned order. He submits that Defendant has already filed written statement. The issue of limitation can be framed and decided by Trial Court after recording evidence of the parties. The issue of limitation is essentially a mixed question of law and fact. The jurisdiction under Order VII Rule 11 of Code of Civil Procedure, 1908 can be exercised only on the basis of contents of plaint without looking to the defence put forth in the written statement. He would further submit that multiple reliefs are claimed in the suit apart from the declaration as regards to the impugned sale deeds. The Plaintiff has also claimed relief of perpetual injunction which can be independently considered by the Court. Plaint cannot be partially rejected. Unless it is demonstrated that plaint as a

1 AIR 2019 SC 1430

2 (2022) 12 SCC 128

3 (2020) 7 SCC 366

whole can be rejected under one or more Sub-clauses of clause 11 of Order VII, application for rejection of plaint cannot be entertained. In support of his contention, he relies upon judgment of Supreme Court of India in case of ***Sejal Glass Limited Vs. Navilan Merchants Pvt. Ltd.*** in Civil Appeal No.10802 of 2017 dated 21st August 2017.

6. Having considered submissions advanced by learned Advocates appearing for respective parties and after going through the documents tendered into service, it can be observed that Applicant sought rejection of plaint on the ground that suit is barred by limitation. Application to that effect was tendered below Exhibit-30 which has been rejected by common order passed below Exhibits 28 and 30 dated 8th April 2024. The Trial Court observed that Plaintiff asserted his date of knowledge of impugned sale deeds as 23rd August 2022, therefore, on the basis of pleading, *prima-facie*, plaint cannot be rejected on the ground of limitation. The Trial Court further observed that Plaintiff is not party to the instrument and it is his case that he was unaware about said alienation. The Trial Court relying upon the observations of High Court of Patna in case of ***Tarkeshwar Pandey Vs Sahabuddin Ansari***⁴ concluded that question of limitation is essentially a mixed question of fact and needs decision on trial, after framing the issue. Consequently, refused to entertain the application for rejection of plaint on ground of limitation.

⁴ (2023) AIR (Patna) 43

7. It is not disputed before this Court that plaint is filed along with supporting documents. The order of City Survey Officer dated 13th December 2013 is tendered along with plaint. It is trite that the documents appended to plaint can be looked into along with contents of plaint to find out as to whether suit is filed within a period of limitation. Careful perusal of the order passed by City Survey officer depicts that father of Plaintiff had objected mutation effected in city survey record on the basis of impugned sale deeds and consequent to such objection, the entries in said city survey record were reversed and restored to the position as on 4th July 1983 by which name of Plaintiff's father was restored in CTS record. It is, therefore, abundantly clear that Plaintiff's father was well aware about the transactions under impugned sale deeds. If Plaintiff's father was aware about the transaction under sale deed and Plaintiff is claiming his right through his father, it can be inferred that the first cause of action to seek declaration against the impugned sale deeds arose to father of Plaintiff in year 2013 itself. Apparently, Plaintiff is not claiming independent right over suit property, therefore, assuming that Plaintiff got knowledge in respect of transaction on the date pleaded in plaint, it cannot be treated as first cause of action. Plaintiff may have multiple causes of actions to file the suit, however, first cause of action that arose to Plaintiff will have to be taken into account while applying law of limitation.

8. Plaintiff claimed the relief of declaration that impugned sale transactions are not binding on his rights. In such case Article 58 governs the proceeding which provides limitation of 3 years from the date when first right to accrues. Similarly, residuary clause under Article 113 of Limitation Act provides for limitation of 3 years to bring any suit from the date when right to accrues. Therefore, limitation would start from date of execution of documents or at the most from the date when Defendant firstly claimed his right on the basis of sale deeds.

9. Although, Plaintiff pleads that he got the knowledge about impugned sale deeds when Defendant Nos.1 to 3 filed objection dated 11th July 2023 for mutating their name in city survey record, such cause of action is illusory particularly when Plaintiff is not raising any independent right and claims through his father i.e. Sureshlal Sandulal Bassaiye.

10. Mr. Mukul Kulkarni, learned Advocate appearing for Respondent No.1/Plaintiff endeavors to contend that Plaintiff has also claimed further relief of perpetual injunction restraining Defendants from obstructing in his peaceful possession over the property. Apparently, it is a consequential relief depending upon substantive relief of declaration as regards to impugned sale deed. It is trite that grant of simplicitor decree of injunction is permissible when it is

claimed as independent and substantive relief. However, where substantive relief is followed by consequential relief of injunction, it cannot be considered as independent relief. The meaningful reading of plaint nowhere suggest that Plaintiff claimed any independent cause of action or right to seek the decree of perpetual injunction against Defendants. The principal relief claimed in suit is declaration that impugned sale deeds are null and void and not binding upon Plaintiff's right over suit property and consequential decree of perpetual injunction that Defendants be restrained from obstructing alleged possession of Plaintiff. The Supreme Court of India in case of ***Padhiyar Prahladji Chenaji (supra)*** relying upon observations in case of ***Anathula Sudhakar Vs P Buchi Reddy (Dead) by Lrs. & Ors.***⁵ observed as under:-

“25. An injunction is a consequential relief and in a suit for declaration with a consequential relief of injunction, it is not a suit for declaration simpliciter, it is a suit for declaration with a further relief. Whether the further relief claimed has, in a particular case as consequential upon a declaration is adequate must always depend upon the facts and circumstances of each case. Where once a suit is held not maintainable, no relief of injunction can be granted. Injunction may be granted even against the true owner of the property, only when the person seeking the relief is in lawful possession and enjoyment of the property and also legally entitled to be in possession, not to disposes him, except in due process of law.”

11. The preposition of law as espoused by Supreme Court, if applied in the facts of present case, it is discernable that relief of injunction is consequential to the main relief of declaration. If sale

⁵ (2008) 4 SCC 594

deed in question remains undisturbed, Plaintiff would have no independent right to seek injunction against Defendants. Therefore, for purpose of applying limitation, cause of action that accrued first to the father of Plaintiff will have to be considered and any further cause of action arose to Plaintiff, thereafter, would not be relevant for applying the law of limitation.

12. The Court is under obligation to determine whether plaintiff discloses cause of action on the basis of pleading in plaint. Documents referred or appended to plaint or from the basis of plaint are required to be treated as part of plaint. On close scrutiny of plaint along with documents, the Court is expected to record findings if plaint is barred by law and liable for rejection at the threshold. In present case, it is evident from order dated 13th December 2013 that Plaintiff's father had knowledge of impugned sale deeds and consequential mutations recorded with the city survey office. Therefore, he had made representation to delete mutation entries taken in deference the impugned sale deeds.

13. The Hon'ble Supreme Court in case of *Dahiben Vs. Arvinbhai Kalyanji Bhanusali (supra)* observed that it is duty of Court to throw threshold the vexatious litigation where no right to sue exists. The provisions of Order VII Rule 11 are mandatory in nature, once any

of the ground specified in clauses (a) to (e) is made out, Court has further caution to find out real cause of action and must be vigilant against camouflage or separation, once Court finds that suit is vexatious or abuse of process of Court, the drastic power under Rule 11 to reject the plaint shall be exercised.

14. Mr. Kulkarni relies upon the judgment in case of *Sejal Glass Ltd. (supra)* to contend that plaint cannot be rejected in part. There cannot be any quarrel as regards to the proposition of law referred to. However, in present case, it can be observed that on the basis of contents of plaint and documents appended thereto, suit seeking declaration against impugned sale deeds is clearly barred by limitation. Consequential relief of perpetual injunction cannot be given independent status. Therefore, the entire plaint is liable to be rejected. In result, following order is passed:-

ORDER

- (i) Civil Revision Application is allowed.
- (ii) The impugned common order dated 8th April 2024 passed by learned Civil Judge, Junior Division, Aurangabad below Exhibit-30 in Regular Civil Suit No.28 of 2024 is hereby quashed and set aside.

(iii) Complaint in Regular Civil Suit No.28 of 2024 stands rejected being barred by limitation.

(S. G. CHAPALGAONKAR, J.)