



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 470 OF 2024

Mrs. Amruta Sandeep Mahajan

Age : 45 yrs, Occ. Housewife

R/at. 7/39, Wardhaman Co-operative

Housing Society Ltd., Sallisbury Park,

Pune – 411 037.

...Applicant

Vs.

1. **Mr. Tukaram Kisan Thite**

2. **Mr. Vitthal Kisan Thite**

3. **Mr. Sarjerao Kisan Thite**

4. **Mr. Maruti Kisan Thite**

All R/at. At post village – Kendur

Tal. Shirur, Dist. Pune – 412 403.

5. **Chandrabhaga Balasaheb Shete**

R/o Kendur Tal. Shirur, Dist. Pune

...Respondents

Mr. Pruthviraj Phalke a/w Ms. Ashwini Mohite	Advocate for the Applicant
---	----------------------------

CORAM : S. M. MODAK, J.

DATE : 21st OCTOBER 2024

ORAL JUDGMENT :-

1. Heard learned Advocate for the Applicant-Defendant No. 1.
2. There was suit filed by the present Respondent Nos. 1 to 4 for

declaration that the sale deed dated 25.08.2003 is illegal and not binding on them. There is also prayer for injuncting Defendant No. 1 from obstructing the possession of the Plaintiffs. The Plaintiffs have pleaded that in fact the documents is not 'transaction of the sale' but in fact the Plaintiffs have obtained the loan from Defendant No. 1 and in fact for securing the interest, all these documents were executed. Plaintiffs have further pleaded that they have repaid the loan.

3. The Defendant No. 1 has initiated an action for mutating his name before the Revenue authorities. Plaintiffs have objected before the Talathi and that is why mutation entry bearing no. 5124 was sent to the Tahasildar Shirur. He has refused to mutate the land, para no. 7.

4. The Plaintiffs have further pleaded about filing of the RTS appeal by Defendant No. 1. It was allowed on 23.03.2010 and matter is remanded back to the Tahasidar.

5. Defendant No. 1 challenged the Order of the sub-divisional officer by preferring an appeal before Additional Collector. The appeal was dismissed on 18.01.2012.

6. The Tahasildar Shirur has sought opinion from the District Rehabilitation Officer, Pune as per his letter dated 20.11.2013. It was informed that the restriction on transfer of land is not lifted and

accordingly, permission is required. In nutshell, the mutation entry no. 5124 was not accepted.

7. On this background, the Plaintiffs have filed a suit on the basis of the cause of action that took place on 26.05.2022. The Defendant No. 1 came on the suit land and obstructed the Plaintiffs possession.

8. The Defendant No. 1 filed an application under Order 7 Rule 11 of the Civil Procedure Code on two grounds:-

(i) Absence of cause of action

(ii) Suit is barred by law of limitation.

9. There are two prayers in the plaint. One is declaration about sale deed and second is permanent injunction.

10. I have read findings by the trial Court. In para no. 16, 17 and 18 all the proceedings before revenue officers are referred. The trial Court observed “*Plaintiff is seeking the perpetual injunction against the Defendants. Thus, plaint cannot be rejected in part.*” in para no. 17. In para no. 18, the trial Court further observed ‘*the issue of the limitation is mixed question of law and fact and it is required to decide after adducing the evidence by both sides*’.

About limitation

11. It is true that only averments in the plaint needs to be perused.

When the entire averments are perused, I do not find cause of action for challenging the sale deed dated 25.08.2003 is specifically pleaded. The suit is filed in the year 2023. In fact if the averment in the plaint relating to the revenue proceedings are perused, we can find that Plaintiffs are very well aware about the steps taken by Defendant No. 1 in mutating the land in his name on the basis of the sale deed. In fact the trial Court has concluded that limitation is mixed question of law and fact. The trial Court ought to have considered the averment in the plaint and could have decided the issue of limitation independently.

Cause of action

12. There are two aspects :-

- (a) Certain facts are pleaded which suggest cause of action.
- (b) Facts may not be correct.

13. While dealing with clause (a), Court has to see whether the plaint denotes cause of action or not. The trial Court is not expected to verify whether these facts are correct or not. There has to be averments about cause of action in respect of declaration and injunction. The trial Court is right that plaint cannot be rejected in part. At the same time, it is also true, if particular relief is barred by law of limitation, and if the Court feels that relief is barred still there is option of striking out the

pleading is available. This is what held in case of *Sejal Glass Limited Vs. Navilan Merchants Pvt. Ltd.*¹ On this background, the order cannot be sustained in the eyes of law, it needs to be set aside.

14. It is true that if there is an Order in favour of the Plaintiffs, they have got every right to support that Order. But while remanding the matter, I have not expressed any opinion about merits of the matter. Even it is remanded no prejudice will be caused. Hence, the following Order is passed:-

ORDER

- (i) The Order dated 02.02.2024 passed by the Court of Civil Judge, Junior Division, Shirur below Exh. 17 in Regular Civil Suit No. 142 of 2023 is set aside.
- (ii) The trial Court is directed to decide the application under Order 7 Rule 11 of the Civil Procedure Code afresh.
- (iii) The contention of all the Parties are kept open.
- (iv) Civil Revision application is disposed of.

[S. M. MODAK, J.]

¹ (2018) 11 SCC 780