



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

WRIT PETITION NO. 6598 OF 2019

Dharampal S/o Pundalik Mahisgawali,
Aged about 41 years, Occ. Private,
R/o House No. 203, At-Post-Borkhedi
(Railway), Tah. & Dist. Nagpur 441108

...Petitioner

// VERSUS //

Shri Krushnarao S/o Upasrao Nagrare
(since dead), through his legal
representatives

1. Shri Pradeep S/o Krushnarao Nagrare,
Aged about 57 years, Occ. Business
2. Shri Prashant S/o Krushna Nagrare,
Aged about 48 years, Occ. Business
Both R/o Plot No.7, 'Ushakkal',
Dattatray Nagar, Nagpur

... Respondents

Shri D.T.Shinde, Advocate for the petitioner.

Shri V.V.Bhangde, Advocate for the respondent nos. 1 and 2.

CORAM : ANIL S. KILOR, J.
DATED : 11th JANUARY, 2024.

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The Order Below Exhibit 100 dated 2nd August, 2019 passed by the learned 10th Joint Civil Judge, Senior Division, Nagpur in Regular Civil Suit No. 4606 of 2012, allowing the application moved by the plaintiff (defendant in counter claim) under Order VII Rule 11(d) of the

Code of Civil Procedure for rejection of counter claim, is under challenge in this writ petition.

3. Admittedly, the application for filing of counter claim was filed by the defendant no.1 on 17th April, 2015 raising a challenge to the sale-deed dated 22nd May, 1995. The said counter claim was allowed and thereafter the issues were framed and after examining of four witnesses of the plaintiffs, the application Exhibit 100 under Order VII Rule 11(d) of the Code of Civil Procedure, was filed by the plaintiff (defendant in counter claim) to reject the counter claim on the point of limitation.

4. Thus, the short question involved in this writ petition is whether the counter claim filed by the petitioner on 17th April, 2015 was well within limitation, as far as challenge raised to the sale-deed dated 22nd May, 1995.

5. As per the plaintiff (defendant in counter claim), the defendant no.1 got the knowledge about the sale-deed dated 22nd May, 1995 in the year 2011 and the time period got expired in the year 2014 and therefore filing of application to amend the written statement and counter claim on 17th April, 2015 is beyond the period of limitation. For this purpose, learned counsel for the respondent has placed reliance of paragraphs 21 and 22 of the counter claim which read thus:

21. It is submitted that due to death of Jago Rupa Mhaigawali and his wife Sitabai, son Pundalik, Gajanan, daughters Shantabai and Kamlabai of deceased Jago and son Yashwant @ Vasanta are intending to partition the suit property by metes and bound in between all legal heirs of Jago Rupa Mhaigawali in the year 2011 and therefore one of the legal heirs of Jago namely Dharmapal approached to the Talathi for the purpose of taking out 7/12 extract, Gaon Namuna-8 and Adhikar Abhilekh Panji etc. After

receipt of his application by Talathi, it has been informed that the suit property presently recorded in 7/12 extract in the name of Krushnarao Upasrao Nagrare by deleting name of Jago Rupa Mhaigawali. Thus after getting the said information from Talathi Dharmapal was shocked about the said act of the Krushnarao Nagrare because according to knowledge of defendant, the suit property never ever alienate or transfer or convey by any mode of document at the hands of deceased Jago Rupa Mhaigawali during his lifetime and it has been informed by Talathi to Dharmapal that as per so called sale deed dated 22.5.1955, the name of Krushnarao Upasrao Nagrare has been shown by deleting the name of Jago Rupa Mhaigawali as Talathi was not aware about the death of Jago Rupa Mhaigawali.”

22. Therefore, after detailed inquiry and after getting material documents from the various authorities on 12.2.2013 present defendant submitted application to the Sub-Divisional Officer, Nagpur Gramin for detailed inquiry about the fraud, mischief, illegal act etc played by krushnarao Nagrare in collusion with revenue officers in respect of deletion of name of jago Rupa Mhaigawali. The said case has been registered by the authority under the provisions of Maharashtra Land Revenue Code for detailed enquiry and the said authority has directed to his subordinate officer i.e. naib Tahsildar, nagpur Gramin to make an detailed enquiry into the matter. In view of that matter and after hearing both the parties and detailed enquiry, Nabi Tahsildar, Nagpur Gramin passed detailed and reasoned order dated 15.2.2014 against the Krushnarao Nagrare. It is submitted that the said authority in its detailed enquiry it has been noticed that Jago Rupa Mhaigawali died on 22.5.1994 leaving behind all legal heirs/ representatives i.e. present defendant Nos. 1 to 11 in RCS No. 4606/2012 and during his lifetime he had not executed and signed so called sale deed dated 22.5.1995 in favour of Krushnarao Nagrare. Even it has been specifically noticed that Krushnarao Nagrare is facing criminal trial before the Judicial Magistrate First Class under the provisions of the Indian Penal Code for creating, manufacturing and preparing false and bogus sale deed dated 22.5.1995 and the said trial is pending.

6. From the above referred paragraphs, it is evident that the intimation given by the Talathi in the year 2011 only shows that the petitioner got knowledge about the transaction. However, the actual knowledge of the sale-deed was received by the petitioner after making inquiry which referred in paragraph 22.

7. Thus, intimation by the Talathi when the petitioner was intending to partition the suit property in the year 2011, does not show that the petitioner received the information about the sale-deed dated 22nd May, 1995 in the year 2011. The inquiry subsequent of the said intimation given by the Talathi, revealed the fact of the execution of the sale-deed dated 22nd May, 1995 and therefore on 22nd February, 2013, the petitioner submitted application to the Sub Divisional Officer for detailed inquiry of the fraud, mischief and illegal act.

8. In the circumstances, I am of the opinion that in this matter the year of knowledge cannot be taken as 2011 as contended by the original plaintiff (defendant in the counter claim).

9. Moreover, learned trial Court has committed error in considering the date of filing of counter claim as 22nd April, 2017 which is the date of order allowing to file the counter claim. Whereas, the application was moved on 17th April, 2015, which would be the relevant date to calculate the time limit.

10. In the circumstances, I am of the opinion that the learned trial Court has committed error in allowing the application Exhibit 100 and thereby rejecting the counter claim filed by the petitioner.

11. At this stage, Shri Bhangde, learned counsel for the respondent no.1 submits that, even otherwise there is no counter claim in the eyes of law, as amendment was not carried out to the written statement within 14 days from the date of order dated 22nd April, 2017 allowing the application for amendment.

12. I am not inclined to consider the above referred contentions for the reason that the said ground was not argued and considered by the learned trial Court.

13. However, the liberty is granted to the respondent no.1 to raise this issue independently if permissible under the law, by filing necessary application.

14. In the above referred observations and having found that counter claim was well within limitation, I pass the following order.

- i. The writ petition is allowed.
- ii. The order dated 2nd August, 2019 passed by the learned 10th Joint Civil Judge, Senior Division, Nagpur in Regular Civil Suit No. 4606 of 2012 is hereby quashed and set aside and consequently the application Exhibit 100 is rejected.

[ANIL S. KILOR, J.]