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CRA 31.2018.odt

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

CIVIL REVISION APPLICATION NO. 31 OF 2018

- 1] Ajay s/o. Ramesh Chaudhary,
Age 47 years, Occ. Service.
 - 2] Abhay s/o. Ramesh Chaudhary,
Age 43 years, Occ. Service,
- Both residing at Post Dambhurni,
Tq. Yawal, Dist. Jalgaon.

.. APPLICANTS

[Ori. Defendant Nos. 3 and 4]

VERSUS

- 1] Milind s/o. Janardan Bhalerao,
Age 27 years, Occ. Agri.
- 2] Deepali d/o. Janardan Bhalerao,
Age 21 years, Occ. Agri.
- 3] Pratibha d/o. Janardan Bhalerao,
Age 35 years, Occ. Agri. And
household,
- 4] Reshmabai w/o. Janardan Bhalerao,
Age 48 yaers, Occ. Household &
Agriculturist
R. Nos. 1 to 4 all R/o. Dambhurni,
Tq. Yawal, District Jalgaon.
- 5] Ushabai w/o. Deepak Nikam,
Age 55 years, Occ. Agri and
Household, R/o. Widgaon,
Tq. Yawal Dist. Jalgaon.
- 6] Mangalabai Suresh Tayde,
Age 55 years, Occ. Agri and Household,
R/o. As above.
- 7] Pitambar S/o. Dashrath Bhalerao,
Age 84 years, Occ. Agriculturist
R/o. Dambhurni, Tq. Yawal, Dist. Jalgaon.

8] Janardan s/o. Pitambar Bhalerao,
Age 58 years, Occ. Agrigulturist,
and household,
R/o. Dambhurni, Tq. Yawal,
District Jalgaon.

.. RESPONDENTS.
[R Nos. 1 to 6
Ori. Plaintiffs and
R. Nos. 7 and 8
Ori. Deft. 1 and 2.

Mr. T.K. Sant, Advocate for applicants,
Mr. S.S. Patil, Advocate for respondent No.1.

CORAM : S.G. CHAPALGAONKAR, J.
DATE : 11th FEBRUARY, 2025.

JUDGMENT :-

1. The applicants/original defendants No. 3 and 4 have filed present revision application impugning the order dated 3.10.2017 passed below Exhibits 1 and 20 in RCS No. 58 of 2014 by which their prayer for rejection of plaint under Order 7 Rule 11(a) of CPC has been declined.

2. Respondent Nos. 1 to 6 instituted RCS No. 58 of 2014 seeking the relief of partition, separate possession of suit land so also declaration that sale deed dated 28.11.1963 executed by defendant No.1 in favour of Sushilabai – grandmother of defendant Nos. 3 and 4, is invalid and not binding over the rights of plaintiffs.

3. It is contention of plaintiffs that suit land bearing Survey No. 371/4, Gat No. 1031 was originally owned by Pitambar Dashrath Bhalerao -Defendant No.1. He was enjoying same as owner as well as Karta of joint family. The land was inam re-granted in name of defendant No. 1. There was no partition of suit land. Defendant

No.1, without legal necessity, transferred suit land in the name of Sushilabai Chaudhari i.e. grandmother of defendant Nos. 3 and 4 under registered sale deed dated 28.11.1963. According to plaintiffs, sale deed has been executed without consent of the other family members. Defendant No.1 had no right to transfer the land. According to plaintiffs, prior to institution of suit, when they asked for partition to defendant No.1, he refused to do so, as land is sold out. As such, cause of action arose to file the suit.

4. Applicants/Original defendant Nos. 3 & 4, appeared in the suit and filed an application below Exh. 20 under Order 7 Rule 11 of CPC, seeking rejection of plaint on the ground that plaintiffs have no right over the suit property and they have no cause of action to file the suit. Further, the suit is not properly valued as per market rate. Even, suit is barred by limitation.

5. The learned trial Judge appears to have recorded evidence of plaintiffs and defendants on aforesaid aspects of the matter and finally rejected the application Exhibit 20.

6. Mr. T.K. Sant, learned advocate appearing for the applicants submits that the plaintiffs Nos. 1 to 4 are grandsons of defendant No.1-Pitambar. Plaintiff Nos. 5 and 6 are his married daughters. Defendant No. 2 is father of plaintiff Nos. 1 to 4. Defendant No.1-Pitambar transferred the suit land in favour of grandmother of applicants i.e. Sushilabai under registered sale deed dated 28.11.1963. Since then, suit land was in possession of grandmother of applicants and thereafter they are enjoying ownership and possession of land. Mr. Sant would further submit that plaintiffs have no right to seek partition and separate possession in respect of suit property which has been transferred by defendant No.1 in the year 1963. He would further submit that suit is

hopelessly barred by limitation.

7. Mr. Sant, invites attention of this court to the order passed by trial court below Exhibits 1 and 20 to contend that a novel procedure has been adopted by the learned Judge. Parties were put to record evidence on the preliminary issues framed in pursuance to the application under Order 7 Rule 11 of CPC and same has been rejected. Learned trial Judge observed that since plaintiffs pleaded that in the Month of May, 2014 they got knowledge as to the sale deed and defendant No.1 refused to grant them share in the suit property, suit has been filed based on the cause of action which is within limitation.

8. Per contra, Mr. Swapnil Patil learned advocate for respondents/plaintiffs supports the impugned order, contending that as soon as plaintiffs came to know about the sale deed of 1963, present suit has been filed. According to him, plaintiffs have a birth right in the suit property hence, they are entitled to seek partition and there is no limitation for the same.

9. Before venturing into the rival contentions, the parameters of jurisdiction to be exercised under Order 7 Rule 11 of CPC, needs to be considered with reference to the law laid down by the Supreme Court of India in the case of ***Dahiben Vs. Arvindbhai Bhanushali reported in (2020)7 SCC 366.*** In the said case, taking stock of the earlier judgments on the issue, the Supreme Court observed that :-

“Remedy under Order 7 Rule 11 is an independent and special remedy, wherein court is empowered to summarily dismiss a suit at the threshold without proceeding to record evidence and conducting trial, on the basis of evidence adduced, if it is satisfied that

action should be terminated on any of the grounds contained in this provision.....

The underlying object of Order 7 Rule 11(a) is that, if in a suit no cause of action is disclosed, or suit is barred by limitation under Rule 11(d), the Court would not permit plaintiff to unnecessarily protract the proceeding in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

A duty is cast on court to determine, as to whether plaint discloses a cause of action by scrutinizing the averments in the plaint, read in conjunction with documents relied upon or whether suit is barred by any law.

In exercise of powers under this provision, the court would determine if assertions made in the plaint are contrary to the statutory law, or judicial dicta, for deciding whether the case for rejection of plaint at the threshold is made out.

Similarly, the test for exercising the power under Order 7 Rule 11 is that, if the averments in plaint are taken in entirety, in conjunction with documents relied upon, would the same result in a decree being passed.

10. The aforesaid legal position has been reiterated by the Supreme Court in the case of **Ramishetti Venkatanna and another vs. Nasyam Jamal Saheb and others, reported in (2023)8 Scale 294 and in case of Raghavendra Sharan Singh vs. Ram Prasanna Singh through LRs (2020)16 SCC 601.**

11. In the light of exposition of law, it would be necessary to find out if plaintiffs had cause of action to file the suit and whether suit is filed within the period of limitation.

12. Pertinently, the challenge in the suit is to the sale deed dated 28.11.1963 executed by defendant No.1 in favour of Sushilabai, grandmother of defendant Nos. 3 and 4. The plaintiff Nos. 1 to 4 are admittedly born after execution of sale deed. They are grandsons of defendant No.1 and sons of defendant No.2. The suit is instituted in the lifetime of grandfather and father contending that there was no partition of joint family property. If plaintiff Nos. 1 to 4 were not born at the time of execution of sale deed, they cannot assert any right in respect of property which was already sold out by their grandfather. Even plaintiff Nos. 5 and 6 are married daughters of defendant No.1. At the time of execution of sale deed by defendant No.1, they could not have asserted any right in the suit property as daughter was not conferred status of coparcener at that time. Looking to their age as stated in the plaint, one does not know whether they were even born at the time of execution of sale deed. They cannot claim any right in the property of father during his lifetime. Even going by amended provision of Section 6 of the Hindu Succession Act, conferring status of coparcener right to daughters. Proviso to Section 6 protects all dispositions made prior to 20th December 2004, states as under :-

“Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.”

Therefore, alienation made in the year 1963 stands protected. Hence, plaintiff Nos. 5 and 6 also cannot assail same by taking resort to amendment to the Hindu Succession Act. Defendant No.1 or 2 never challenged the sale deed dated 28.11.1963 executed by defendant No.1. Therefore, taking the averments in the plaint as it is, plaintiffs cannot assert any right in the suit land, which is disposed by defendant No.1 under registered sale deed of 1963.

13. At this stage, reference can be given to the judgment of the Supreme Court in case of **“Swami Atmananda and others vs. Sri. Ramakrishna Tapovanam and others” (2005) 10 SCC 51**, wherein their Lordships observed as under :-

*“Cause of action” means every fact which would be necessary for plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit. While considering an application under Order 7 Rule 11 CPC, what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory. **What is required is that a clear right must be made out in the plaint.** If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.”*

14. In yet another judgment, in the matter of **“T. Arivandandam vs. T.V. Satyapal and another” reported in (1977) 4d SCC 467**, their Lordships, observed as under :-

“The learned Munsiff must remember that if on a meaningful – not formal – reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11, C.P.C., taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits.”

15. In light of exposition of law by Supreme Court, in

absence of the right in the suit property, assuming plaintiffs got knowledge regarding sale deed of 1963 in year 2014, they cannot make out cause of action to institute suit for partition and separate possession. When the defendant Nos. 1 and 2 (father and grandfather of plaintiffs) never objected the sale deed or asserted any right in respect of the property, the plaintiffs cannot have independent right under the Succession Act. Learned trial Court completely ignored aforesaid aspect of the matter and got trapped by illusory and fictitious cause of action depicted in plaint. Pertinent to note here that admittedly suit land was inam regranted to defendant No.1. He was granted ownership. Hence, he was absolute owner and entitled to dispose of property.

16. In that view of the matter, the order impugned is unsustainable in law. The application Exh.20 filed by applicants/defendant Nos. 3 and 4, deserves to be allowed and plaint is liable to be rejected. In the result, the following order :-

O R D E R

- [A] Civil revision application stands allowed in terms of prayer clause (B).
- [B] Consequently, the plaint in R.C.S.No. 58 of 2014 pending before the Civil Judge (Junior Division), Yawal, hereby stands rejected.

[S.G. CHAPALGAONKAR, J]

grt/-