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949 sr.no. ..odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

949 CRA NO. 63 OF 2024

SMT. ARCHANA W/O PARSHURAM LUTE

....Petitioner

VERSUS

MR. MOHAMMAD MOIN S/O MOHAMMAD KHAJA AND OTHERS

.....Respondent

.....

Advocate for the Petitioner : Mr. Mukhedkar Amit Arunkumar

Advocate for Respondents : Mr. S.R. Bagal h/f. Mr. Gadegaonkar Bharat

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 9TH JANUARY, 2025.

P.C. :-

The original defendant in R.C.S. No. 230 of 2020 assails the order dated 16.1.2024 passed below Exh.24 by which the prayer for rejection of plaint under Order 7 Rule 11 of C.P.C. has been declined.

2. Mr. Mukhedkar, learned advocate for applicant submits that the respondents instituted suit seeking a decree of declaration of ownership and perpetual injunction, so also, cancellation of sale deed dated 20.9.1988 executed by plaintiffs in favour of defendant Nos. 1 and 2. According to him, suit filed in the year 2020 is ex-facie barred by limitation. The application Exh.24 moved before the trial court seeking rejection of plaint as the suit is barred by limitation, same has been dismissed. In support of his contention, he relies upon the law laid down by the Supreme Court in the case of *Dahiben vs. Arvinbhai Kalyanji*

Bhanusali reported in (2020) 7 SCC 366 and in the case of VM. Salgaonkar Vs. Board of Trustees of Port of Mormugao reported in (2005)4 SCC 616.

3. Per contra, learned advocate for respondents invites attention of this Court to the specific pleadings in the plaint, which stipulates that the plaintiffs are neighbours. Plaintiff No.1 was residing at Nisamabad in the State of Telangana, Plaintiff was a Labour. They were first time disturbed from cultivation of land by defendant No.3. Thereafter, they came to know about the sale deed dated 26.9.1988 and the mutation entry , so also sale deed dated 3.8.2020, that the cause of action to file present suit arose on 3.9.2020. As such, the suit is within limitation.

3. Having considered submissions advanced, apparently, the applicant is seeking rejection of plaint invoking order 7 Rule 11(D) contending that the suit is ex-facie barred by limitation. There is no dispute that Article 59 of the Limitation Act, 1963, still govern the present suit, which states as under :-

ARTICLE	LIMITATION	TIME FROM WHICH PERIOD BEGINS TO RUN
59. To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years.	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him"

4. Plain reading of Article 59 depicts that the period of 3 years is provided to set up the claim for cancellation or setting aside an instrument, the time begins to run from the date when the facts entitling the plaintiff to have instrument cancelled or set aside has become known to him. Apparently, time will have to be counted from the date of his knowledge of the instrument that is sought to be cancelled in the suit.

5. Mr. Mukhedkar would submit that the sale deed of 1988 is a registered document. Further, there was mutation entry consequent to the sale deed. Therefore, it will have to be presumed that the plaintiff had knowledge of the execution of such document and consequential mutation entries. He submits that the plaintiff themselves are parties to the sale deed, so, it will not lie in their mouth to say that they had no knowledge. The suit is vexatious and is liable to be rejected at the threshold.

6. Per contra, Mr. Bagal, learned advocate appearing for the respondents submits that pleadings in the application clearly stipulates the date of knowledge about aforesaid sale deed as 3.8.2020. Although the document is registered, plaintiffs have specifically pleaded that it is a case of impersonation and plaintiffs never signed any such document or executed the same.

7. Therefore, the crucial question, as to whether the plaintiff had knowledge of execution of sale deed and consequent mutation

entries is a disputed question of fact and law, and needs decision after framing the issue at the trial. By reading plaint or documents appended to plaint, it cannot be concluded at this stage that the suit is barred by limitation. The trial court considered the aforesaid aspects and rightly rejected prayer of the applicant made vide application below Exh. 24.

4. No fault or jurisdictional error can be found in the impugned order. Consequently, civil revision application stands rejected.

[S.G. CHAPALGAONKAR, J]

grt/-