

challenged. She submits that the cause of action pleaded in paragraph 9 is only the result of clever drafting to bring the suit within the law of limitation. She submits that the plaintiff, though aware of the execution of the document of 1995, filed the suit only in the year 2017, seeking to challenge the partition document and further seeking partition and separate possession. She therefore submits that the pleadings in the plaint itself would indicate that the plaintiff was aware of the registered partition document of 1995, which she has admitted to have been signed, shows that the averment with regard to the cause of action is only with the intention to bring the suit within the limitation.

3. To support her submissions on the scope of Order VII Rule 11 of the CPC, learned counsel for the applicant relies upon the decision of the Hon'ble Apex Court in the case of ***Dahiben vs. Arvindbhai Kalyanji Bhanushali (Gajra) Dead through legal representatives and Others***¹. She submits that if, on the plain reading of the averment in the plaint, the suit appears to be barred by limitation, the same can be rejected in view of Order VII Rule 11(d) of CPC. On the point of the plaint liable to be rejected as barred by limitation, learned

¹ (2020) 7 SCC 366

counsel for the applicant relied upon the decision of the Hon'ble Apex Court in the case of *Nikhila Divyang Mehta and Another vs. Hitesh P. Sanghvi and Others*² and in the case of *Shakti Bhog Food Industries Limited vs. Central Bank of India and Another*³.

4. With reference to the decision in *Nikhila Divyang Mehta* learned counsel for the applicant submits that in more or less similar facts the Hon'ble Apex Court held that the first cause of action as pleaded in the plaint is required to be considered and it would be obligatory on the court to dismiss the suit if it is, on the face of it, barred by limitation. She submits that the Hon'ble Apex Court, though held that the issue of limitation is a mixed question of law and fact, the suit can be rejected at the threshold if the cause of action as pleaded would indicate that the first cause of action that arose as pleaded in the plaint shows that the suit is barred by limitation. She relied upon paragraph 28 of the judgment, where a distinction is made between "having knowledge" and "full knowledge" to decide whether the suit would be barred by limitation on the plain reading of the averments in the plaint.

² 2025 SCC OnLine SC 779

³ (2020) 17 SCC 260

5. On a similar proposition, learned counsel for the applicant relied upon the decision in the case of ***Shakti Bhog Food Industries Limited*** to support her submissions that the assertion made in the plaint shows the plaintiff's knowledge about the document of 1995, as she has admitted execution of the document. She therefore submits that on a plain reading of the plaint, the suit is required to be rejected at the threshold.

6. Learned counsel for the respondents submits that the cause of action would depend upon a bundle of facts specifically pleaded in the plaint. In the present case, he submits that though the plaintiff admits execution of the document of 1995, she specifically pleaded about her date and source of knowledge of the year 2017 that the document executed in 1995 was a document of partition. He therefore submits that the plaintiff would be entitled to support her contentions by leading evidence, and the suit cannot be rejected at the threshold.

7. I have perused the papers of the civil revision application. Learned counsel for the applicant may be right in submitting that the plaintiff has averred about her knowledge

of the document of 1995 in the earlier paragraph of the plaint and that the issue regarding cause of action for the purpose of limitation will have to be decided by reading plaint as a whole. I have therefore carefully examined the pleadings in the entire plaint. The plaintiff has admitted the execution and registration of the document of the year 1995. She has pleaded that the signatures on the document of 1995 were taken forcibly by the defendant. She further has pleaded the particulars regarding the other suit filed regarding the suit property. She has specifically averred that it was only in the year 2017 that she learnt that the document executed in 1995 was a document of partition. Hence, the suit was filed on 12th December 2017. Considering the explanation given by the plaintiff regarding her date and source of knowledge about the document of 1995 being a document of partition only in the year 2017, the learned Judge has rejected the application filed under Order VII Rule 11 of the CPC. The learned Judge has therefore considered the averment made in the entire plaint and has considered the cause of action pleaded by the plaintiff as a bundle of facts which would require evidence.

8. There cannot be any debate on the scope of Order VII Rule 11 for rejecting the plaint even on the point of the suit being barred by limitation. The decision relied upon by the learned counsel for the appellant in the case of ***Nikhila Divyang Mehta*** would not assist the argument made on behalf of the applicant. In the said case, the rejection of the plaint was upheld by the Hon'ble Apex court in view of the cause of action as pleaded in the facts of that case. There is no debate on the proposition and the legal principles settled by the Hon'ble Apex Court in both the decisions relied upon by the learned counsel for the applicant.

9. In the decision of the Hon'ble Apex Court in the case of ***Shakti Bhog Food Industries Limited***, the Hon'ble Apex Court in paragraph 22 observed that the position that a cause of action for filing a suit would consist of a bundle of facts is a well-established legal position. The Hon'ble Apex Court further held that the factum of the suit being barred by limitation, ordinarily, would be a mixed question of fact and law and even for that reason, the assertion in the plaint will have to be considered. In the facts of the present case, the specific averments made in the plaint explaining the source

of knowledge about the nature of the document of 1995 would necessitate leading evidence, and the plaint cannot be rejected at the threshold. Considering the averments in the plaint, the issue of limitation in the present case would be a mixed question of law and facts, which would warrant a trial. Hence, the plaint cannot be rejected at the threshold.

10. I do not find any illegality or perversity in the reasons recorded by the learned Judge in the impugned order. Hence, no interference is called for in the impugned judgment and order. However, it is clarified that it would be open for the parties to agitate their rival submissions on the issue of limitation at the time of trial. The issue of limitation, if framed in the suit, shall be decided independently and uninfluenced by the observations made in the impugned order or this order.

11. For the reasons recorded above, Civil Revision Application is dismissed.

[GAURI GODSE, J.]