

lresh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 336 OF 2024

Anil Hiralal Bhandari

.....Applicant

Vs.

Vishwanath Dattatraya Thorve
and ors

.....Respondents

Mr. Nitin Mulye for the applicant

Mr. Sachin Gite for the respondents

Mr. Balaji P. Shinde i/b Mr. Yuvraj Tajane for respondent no. 2

CORAM : GAURI GODSE, J.

DATE : 1st AUGUST 2025

ORDER:

1. This Civil Revision Application is filed by defendant no. 7 to challenge the order rejecting the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('CPC').

2. Learned counsel for the applicant submits that the suit is filed with inconsistent pleas. He submits that the plaintiffs pleaded the source of possession based on a lease executed by the original holder in favour of the predecessor-in-title of the plaintiffs, and at the same time, claimed perfection of title by way of adverse

possession. In the meantime, this defendant purchased the suit property from defendant nos. 1 to 6 by a registered sale deed dated 18th August 2008. He submits that only to bring the suit within the limitation, the plaintiffs did not seek cancellation of the sale deed; however, they sought a prayer for a declaration that the sale deed would not be binding upon the plaintiffs. He, therefore, submits that by way of clever drafting, the prayers are made in the suit to bring the suit within the limitation.

3. Learned counsel for the applicant further submits that the cause of action pleaded to seek a declaration of title by way of adverse possession is based on an illusory cause of action. No specific dates are pleaded regarding possession being adverse to the original owners, and thus, in the absence of material particulars pleaded, the cause of action in paragraph 12 of the plaint would not be a meaningful cause of action. Based on the pleadings, if the plaintiffs are not likely to succeed, the plaint would be liable to be rejected on the ground of no meaningful cause of action and the suit being barred by limitation. To support his submissions, learned counsel for the applicant relied upon the following decisions:

Mohan Lal (Deceased) through his LRs Kachru and Others Vs. Mirza Abdul Gaffar and another¹, Reserve Bank of India and others Vs. Peerless General Finance and Investment Company Ltd and another², Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by Legal Representatives³, I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and others⁴, Roop Singh (Dead) Through LRs Vs. Ram Singh (Dead) Through LRs⁵, Travancore Rubber & Tea Co. Ltd. Vs. Commissioner of Income Tax, Trivandrum⁶, T. Arivandandam Vs. T. V. Satyapal and another⁷, The State of Karnataka and another Vs. Ranganatha Reddy and another⁸ and Premnath Khanna and others Vs. Narinder Nath Kapoor (Dead) Through Legal Representatives and others⁹

4. Learned counsel for the respondents-plaintiffs submits that the plaint will have to be read as a whole, and only particular paragraphs cannot be read in isolation to reject the plaint. He submits that the plaintiffs have pleaded the source of possession

¹ (1996) 1 Supreme Court Cases 639

² (1996) 1 Supreme Court Cases 642

³ (2020) 16 Supreme Court Cases 601

⁴ (1998) 2 Supreme Court Cases 70

⁵ (2020) 2 Supreme Court Cases 708

⁶ (2020) 2 Supreme Court Cases 715

⁷ (1977) 4 Supreme Court Cases 4678

⁸ (1977) 4 Supreme Court Cases 471

⁹ (2016) 12 Supreme Court Cases 235

through the original holder of the land, i.e. Pandurang Fakira Bhaskar. The original holder had given the land to the plaintiffs on rent. The plaintiffs had constructed a shed on the land. In the year 2004, the original holder had agreed to sell the property to the plaintiffs. However, he died on 26th May 2005, and thus, the transaction could not be completed. The plaintiffs further pleaded that, except for the obstruction raised in 2004, the defendants did not raise any objection to the plaintiffs' continuous possession after 2004. Hence, the plaintiffs have given particulars in paragraph 10 for perfection of title by way of adverse possession.

5. With reference to the prayer for declaration regarding the sale deed in favour of defendant no. 7, the plaintiffs have pleaded that when the obstruction was raised, the plaintiffs had filed a police complaint on 23rd November 2008. Learned counsel for the plaintiffs, therefore, submits that the cause of action pleaded in paragraph 12 is with reference to the other material particulars pleaded in the earlier paragraphs. So far as the objection on limitation is concerned, learned counsel for the plaintiffs submits that even if the plaintiffs failed to get a declaration regarding defendant no. 7's title, the plaintiffs have pleaded all the material

particulars regarding the declaration of their title by way of adverse possession. He, therefore, submits that the plaint cannot be rejected partially only on the point of one of the prayers being barred by limitation.

6. I have perused the papers of the Civil Revision Application. I have carefully examined the pleadings in the plaint. The plaintiffs have pleaded material particulars regarding the original holder giving the land on rent to the father of plaintiff nos. 1 and 6, who was father-in-law of plaintiff no. 2 and grandfather of plaintiff nos. 3 to 5. The plaintiffs have further pleaded that after the land was taken on rent, the shed was constructed by the plaintiffs. The plaintiffs further contended that sometime in 2004, the original holder, Pandurang Bhaskar, had agreed to sell the property to the plaintiffs; however, due to his death on 26th May 2005, the transaction did not materialise. Thus, the plaintiffs further claim that based on the agreement of 2004, the plaintiffs called upon defendant nos. 1 to 6 to complete the transaction; however, in view of the disputes between the plaintiffs and those defendants, the same was not materialised, and the plaintiffs had also filed a police complaint on 23rd November 2008. The plaintiffs further

pleaded that after 2008, they have been in continuous and unobstructed possession of the suit property. Hence, in view of these pleadings, the plaintiffs have claimed perfection of title by way of adverse possession in the suit filed on 3rd August 2023.

7. In the meantime, since the defendant no. 7 had purchased the property, the plaintiffs have also prayed for a declaration that the sale deed in favour of defendant no. 7 would not be binding upon the plaintiffs. With these averments, the plaintiffs have prayed for a declaration of title by way of adverse possession, injunction to protect their possession and the declaration that the sale deed of defendant no. 7 would not be binding upon the plaintiffs. In view of these material particulars, the Trial Court rejected the application under Order VII Rule 11 of CPC. The learned Trial Judge held that if the plaint is read in its entirety, the cause of action as pleaded is a bundle of facts in the entire plaint. Hence, the plaint cannot be rejected on the ground that there is no cause of action. With regard to the objection of limitation, the Trial Court held that based on the material particulars pleaded in paragraphs 8 and 10 about the cause of action, the plaint cannot be rejected at the threshold on the ground that it is barred by

limitation. Hence, based on the pleadings, the Trial Court held that the plaint cannot be rejected at the threshold.

8. Learned counsel for the applicant also argued that the plaintiffs have not produced any supporting receipts to prove their case regarding the payments made for the transaction of 2004. These grounds cannot be considered at the stage of Order VII Rule 11 of CPC, as the same would warrant trial, and the rival contentions can be considered only at the time of a full-fledged trial .

9. In the decisions relied upon by the learned counsel for the applicant in the case of *Raghwendra Singh*, the plaintiffs had contended that he and his brother had purchased the property jointly. The plaintiff had prayed for a declaration that the gift deed executed was a showy and sham transaction, and no title and possession with respect to the gifted property was passed on to the original defendant, and hence it was not binding upon the plaintiff. With reference to these pleadings and dates regarding execution of the gift deed, the Hon'ble Apex Court held that the prayer for cancellation of the gift deed was not prayed as it would have been barred by limitation. Thus, in view of the facts before

the Hon'ble Apex Court, it was held that the plaintiff not making a prayer for a declaration to set aside the gift deed, was a result of clever drafting only to bring the suit within the limitation to get over the period of limitation provided under Article 59 of The Limitation Act, 1963. In view of the facts in the said case before the Hon'ble Apex Court, the plaint was rejected on the ground that it would be barred by limitation on the plain reading of the plaint.

10. In the case of *I.T.C. Limited* and in the case of *Mohan Lal*, the Hon'ble Apex Court held that if the question is whether the real cause of action has been set out in the plaint, or whether sometime purely illusory has been stated only with a view to get out of Order VII Rule 11 of CPC as a result of clever drafting, the draft creating illusion on cause of action cannot be permitted to continue with the suit and the plaintiff is required to plead a clear right to sue in the plaint. Considering the cause of action pleaded in the facts in the said case, the Hon'ble Apex Court held that, based on an illusory cause of action, the suit cannot be rejected at the threshold.

11. In the case of *Mohan Lal*, the issue was regarding inconsistent pleas on the ground of Article 65 of The Limitation Act

and the adverse possession. The decision in the case of ***Mohan Lal*** was on merits after a full-fledged trial. Hence, the legal principles settled in the case of ***Mohan Lal*** cannot be a ground to reject the plaint in the present case at the threshold. Similarly, even in the case of ***Raghwendra Singh***, the issue of inconsistent plea was considered after a full-fledged trial, and these legal principles settled in the said decisions would not be applicable to the present facts for rejection of the plaint at the threshold. The legal principles settled by the Hon'ble Apex Court in the case of ***T. Arivandandam*** are on the point of rejection of the plaint for want of a meaningful cause of action. These legal principles are consistently followed in all the other judgments relied upon by the learned counsel for the applicant.

12. So far as the present case is concerned, as discussed in the above paragraphs, the issue of limitation would be a mixed question of law and fact, so far as the prayer for declaration of title by way of adverse possession is concerned. The prayer for declaration regarding the sale deed in favour of defendant no. 7 is concerned, is also based on bundle of facts raising the cause of action. Hence, the plaintiff would be entitled to lead evidence to

support the cause of action for the prayer for declaration. In any case, in view of the said prayer the plaint cannot be rejected only on the ground that one of the prayers would be barred by limitation. It is a well-established legal principle that the plaint cannot be partially rejected.

13. In the present case, in view of the pleadings regarding perfection of title by way of adverse possession, the suit would warrant a trial, and the plaint cannot be rejected at the threshold. Hence, I do not find any illegality or any perversity in the reasons recorded in the impugned order. The Civil Revision Application is therefore dismissed.

[GAURI GODSE, J.]