
IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.3827 OF 2024
IN
SUIT NO.326 OF 2023

Bombay Taximens CHS Ltd.Applicant
Versus
Pashah Begum Busheri & Ors.Defendants

Mr. Chetan Kapadia, Senior Advocate *for Applicant in IA/3827/2024.*

Mr. Karl Tamboly *a/w. Zahan Setalvad, Angel Carneiro, Smith Colaco, Tushar Cooper i/b. Mulla & Mulla & Craigle Blunt & Caroe, for Plaintiff in S/126/2023 and for Defendants in IA/3827/2024.*

Ms Jigisha Vadodaria *a/w. Ms Masira Lulania & Hasan Mushabber i/b. Negandhi, Shah & Himayatullah, for Defendant No.2.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 16, 2026

JUDGEMENT:

Context and Factual Background:

1. Interim Application No. 3827 of 2024 is an application under Order VII, Rule 11 of the Code of Civil Procedure, 1908, filed by Defendant No. 1, Bombay Taximen's Co-operative Housing Society Ltd. ("***Applicant***") seeking rejection of the Plaint in Suit No. 326 of 2023 ("***Suit***") on the premise that it is hopelessly barred by limitation and that clever drafting has led to

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characterising a suit for declaratory relief as a suit for recovery of possession in order to mask this foundational defect.

2. The Applicant contends that the Application is founded on the premise that the Suit primarily seeks a declaration that the Plaintiffs are the owners of the land as described, admeasuring approximately 5,038.50 square metres (“*Suit Property*”) and that a Deed of Conveyance executed between the Plaintiffs’ predecessors in title and the Applicant on April 17, 1972 is valid and subsisting. The Applicant contends that the Plaintiffs’ primary contention is that two buildings of the Applicant encroach on the Plaintiffs’ land, which is otherwise in the free and vacant possession of the Plaintiffs, and that the Plaintiffs apprehend that the Defendants would encroach upon and usurp their land.

3. The Applicant submits that the Complaint is founded on the premise that the Plaintiffs are in juridical possession of the Suit Property, which is purportedly owned by them. Apart from the declaration that the Suit Property belongs to the Plaintiffs, the Suit seeks a permanent injunction to restrain the Defendants from claiming any right, title or interest in the Suit Property.

4. Another prayer is for vacation and demolition of the two buildings if the Court were to hold a view that the Plaintiffs are not in possession of the Suit Property. The Applicant would contend that the entire Complaint being premised

on the Plaintiffs being in juridical possession of the Suit Property, there is no pleading in the Plaint to support such a prayer. Therefore, it is contended that this prayer has been added merely to indicate that the Suit is for possession and not for declaratory relief.

5. Therefore, the Applicant contends, the Plaintiffs have indulged in clever drafting to bring the Suit within the ambit of Article 65 of the Limitation Act, 1963 (“***Limitation Act***”) and thereby avail of a limitation period of 12 years, when the Suit is actually one for declaratory relief, thereby falling within the ambit of Article 58 of the Limitation Act, which stipulates a limitation period of only three years.

6. The Plaintiffs having contended that during a visit to the Suit Property in August 2022, they discovered that the Applicant had encroached on the Suit Property by constructing illegal structures on it. It is contended that prior to such visit and “private survey”, the Plaintiffs disclaim knowledge of the Applicant’s buildings encroaching on their land. These buildings have been standing since 1982; the Applicant’s name was entered in the revenue records in 1978; and even according to the Plaintiffs, this was to their knowledge in January 2013.

7. That apart, the Applicant would refer to a notice dated June 22, 2018 issued to the Applicant calling upon it to remove itself from the Suit Property;

and another notice dated July 13, 2018 issued by the Plaintiffs' lawyers to various municipal authorities asserting the Plaintiffs' rights to the Suit Property and calling upon them not to grant any approvals for development and to withdraw any approvals that may have been given. By reference to these two documents, the Applicant would contend that to the Plaintiffs' knowledge, the assertions in the Complaint are false, inasmuch as the Plaintiff asserts that it was only a visit in August 2022 that led to the discovery of the encroachment.

8. The prayer seeking possession being only an alternate prayer, the Applicant would submit that the averment about discovery in August 2022 is evidently false, hoping to reset the limitation clock.

9. The Plaintiffs' right to seek declaratory relief arose in January 2013, according to the Applicant, because the Plaintiffs themselves have pleaded that they came across a public notice dated January 15, 2013 and even responded with their own public notice dated January 18, 2013. At that time, the Plaintiffs ought to have filed a declaratory suit and instead chose to pursue proceedings before the Revenue Authorities, seeking rectification of the land records. Therefore, the Applicant contends that the Suit is liable to be dismissed as being barred by limitation, since the primary character of the Suit is one seeking declaratory relief, with the relief of possession only being an

alternate, apart from the prayer seeking possession not being backed by any pleading at all.

10. Pursuit of rectification of revenue records is hardly meaningful, the Applicant contends, since it is trite law that mutation entries do not determine title. The Plaintiffs purport to be inheritors of the Suit Property, and not acquirers of the Suit Property, the onus of proving title is primarily on the Plaintiffs and therefore, it is claimed that the prayer for declaration is the primary prayer and all other reliefs are “subservient” to that prayer.

11. The Plaintiffs submit that in 1947 a larger tract of land had been acquired by the Plaintiffs’ predecessors in title from one Mohanlal Umedmal (“**Original Seller**”). Such land covered Survey No. 297/1; Survey No. 306/1; and Survey No. 307/1 (“**Larger Property**”), from which the Original Seller had also illegally sold a portion to his own father in May 1962. The Plaintiffs contend that Survey 297/1 is part of the Suit Property, and other land in Survey No. 298/1 that is not part of the Suit Property was also sold in this manner. In August 1965, this land including the portion of Survey No.297/1 was purportedly sold onward through an Articles of Agreement but no conveyance deed was executed.

12. Suit No.451 of 1967 had been filed by the Plaintiffs’ predecessors while Suit No. 862 of 1968 was filed by the purported purchaser (from the Original

Seller's father), seeking specific performance. In Suit No. 862 of 1968, the Plaintiffs' predecessors were made parties. The Plaintiffs contend that upon the demise of the Plaintiffs' predecessor, on April 17, 1972, a portion of the land so acquired was sold to the Applicant with the Plaintiffs retaining the Suit Property and the Conveyance Deed explicitly recorded that the Suit Property had been retained. An English Mortgage created on the same date also recorded the same.

13. Consent Terms dated February 22, 1974 in Suit No.451 of 1967 contained a declaration that the Original Seller's father had no right, title or interest in the Suit Property. Likewise, Consent Terms filed in Suit No. 862 of 1968 also recorded that the Original Seller's father had no interest in the Suit Property. The counterparty too acknowledged this position in the Consent Terms. In 1978, Suit No. 531 of 1978 was filed seeking recovery of the balance consideration due from the Applicant (for this amount an English Mortgage too had been recorded).

14. However, the City Survey Officer had erroneously entered the name of the Applicant alone in the revenue records, and the Plaintiffs have pleaded that this came to their knowledge only in January 2013. The Plaintiffs submit that neither in the Written Statement in Suit No. 531 of 1978 nor in the Consent Terms dated August 9, 1999 has the Applicant ever denied the

Plaintiffs' interest in the Suit Property. It was in January 2013 that upon a public notice being issued asserting the Applicant's ownership of the Suit Property, the Plaintiffs state they got to know that this wider claim was being made – this was never the position of the Applicant throughout even the past litigation.

15. The Plaintiffs issued their own public notice in three days pointing out their ownership interests in the Suit Property. The Plaintiffs followed upon their notice; took up proceedings for correction of the revenue records; and in fact succeeded in getting an order dated August 31, 2013, directing that the land records be rectified. The Applicant appealed that order and claimed to have acquired interests through the purchasers from the Original Seller's father. The Applicant's appeal against the order correcting the land records was also dismissed on August 2, 2014. In a further appeal before the Revenue Minister, the Plaintiffs would submit, the Applicant, for the first time, claimed adverse possession (earlier the Applicant had claimed through the purchaser of property from the Original Seller's father).

16. This led to the aforesaid two letters alluded to by the Applicant – notices dated June 22, 2018 and July 13, 2018. On September 15, 2020, the mutation entry was corrected to enter the Plaintiffs' predecessors' names and was further modified on July 23, 2021 to record the Plaintiffs' names in the land

records. Yet, on May 9, 2022, the Applicant entered into a Development Agreement to redevelop, among others, the Suit Property, which is what purportedly led to the “private survey” in August 2022 and eventually led to the filing of the Suit.

Analysis and Findings:

17. Against this backdrop, I have heard Mr. Chetan Kapadia, Learned Senior Advocate on behalf of the Applicant and Mr. Karl Tamboly, Learned Advocate on behalf of the Plaintiffs. With their assistance, I have examined the record and the case law pressed into service by them. It is well settled that when considering an application under Order VII, Rule 11, it is the pleadings in the Complaint and the annexures to it that would form the parameters of what is to be examined to consider if the Suit deserves to be dismissed. The Court cannot conduct a mini-trial at this stage nor embark upon an exercise of making a value judgement on the potential for success or truthfulness with an objective of looking to dismiss the Suit.

18. Against this backdrop, I am afraid the Applicant has not made out a case for the drastic step of dismissing the Suit at the threshold. Mr. Kapadia has waded into the domain of a mini-trial when he desires to have the Court adjudicate whether the Plaintiffs knew all along about the Applicant’s interest

in the Suit Property and slept over their rights and that the Plaintiffs should be shut out at the threshold.

19. To begin with, the Plaintiffs as *dominus litis* are entitled to fashion the Suit in the manner they choose. Indeed, the Suit claims ownership of the Suit Property and resists the Applicant's attempt at asserting adverse possession, which position was adopted by the Applicant in 2014. If this was the Applicant's position, the Suit having been filed in February 2023, seeking, among others, possession, is filed well within 12 years and towards this end, is indeed to be examined in the light of Article 65 and cannot be said to be barred by limitation.

20. As regards the applicability of Article 58 and the three-year limitation period for a declaratory suit, one would have to examine when the right to sue first accrued. This is necessarily a mixed question of fact and law and evidence would need to be led to determine this question with any finality. It could well be an argument and contention that the Applicant would take in the trial, but one cannot hold at the threshold that the right to sue accrued in January 2013. On this count too, it is well settled that the right to sue cannot be said to have accrued with every assertion of right by any other party. There has to be an actual, direct and subsisting threat coupled with adverse action. The threat perception for the right to sue having to accrue, has to be perceived from the

lens of the Plaintiffs and whether their perception is a reasonable one. This is clearly a matter of evidence and cannot be the subject matter of a summary determination at the threshold, merely because the Applicant chooses to characterise what according to the Applicant, is the “real” character of the Suit. In this case, the Applicant chooses to paint the Suit as “primarily” being aimed at declaratory relief.

21. The Applicant had all along pointed to any interest it had, if at all, to rights purportedly coming through the purchaser from the Original Seller’s father, and suddenly changed it to a contention of adverse possession. There have been at least three Suits preceding these proceedings and in none of these, is there an evident and inexorable concrete threat to the perception of entitlement of the Plaintiffs. Suffice it to say that when there is a trial on merits, it shall always be open to the parties to have this issue adjudicated, but where the question of limitation is necessarily and evidently a mixed question of fact and law and where the factual matrix entails a chequered history of litigation with competing positions having been adopted through that journey. In my opinion, the case does not lend itself for an outright rejection of the Complaint on the ground of the Suit being barred by the law of limitation.

22. Whether the Plaintiffs can comprehensively show that the threat perception that the Applicant would have liked the Plaintiffs to have had in

2013 is of a nature such that the right to sue accrued, is a matter of trial. The test would be to see what a reasonable person would conclude based on the evidence. Whether the Plaintiffs were sanguine in their belief that the threat was not concrete enough to seek declaratory relief is a matter of evidence.

23. Therefore, in my opinion, at the threshold stage, the Applicant has not made out a case for rejection of the Suit. Whether the Plaintiffs are truthful about having conducted a private survey in August 2022 is itself a matter of evidence and trial. The pleadings have to be taken at face value and in the course of the trial, the Applicant would have the right to rebut the Plaintiffs' contentions. At this threshold stage, it is not for this Court to conduct a mini-trial, ignore the Plaintiffs' rights as *dominus litis* to set up the case in the manner they choose, and inexorably hold that the Plaintiffs have indulged in "clever drafting".

24. Likewise, while a mutation entry in the revenue records is not a conclusive determinant of title, the fact that the Plaintiffs pursued their entitlements and successfully had the mutation entries corrected would show that the Plaintiffs did not sleep over their rights. The Plaintiffs' threat perception from the Applicant has to be a reasonable and informed one and when the right to sue accrued itself would need to be examined with evidence being led by the Applicant to prove when according to the Applicant, the right

to sue accrued for purposes of Article 58. Therefore, in my opinion, even if one were to accept the contention that the resort to a relief of possession is a contrivance to overcome Article 58, there is no basis to inexorably conclude at this very stage, the Plaintiffs can be non-suited in terms of Article 58.

25. I must also state that I am unable to find that there is no pleading at all by the Plaintiffs about the relief of possession. Indeed, the Plaintiffs have pleaded that the Applicant sought to claim adverse possession for the first time in the revenue proceedings before the Revenue Minister. Therefore, it cannot be fairly and reasonably contended by the Applicant that there is no pleading relating to the relief for possession in the Plaint. So also, there is nothing to indicate that the declaratory relief and the relief of possession are mutually self-destructive; rather, they fall within the ambit of alternatives among the reliefs that one may legitimately pursue. In the stage of trial, the Court can ascertain if there is an encroachment, the extent of encroachment, and grant the reliefs that are sought.

26. In sum, a plain reading of the Plaint and the documents relied upon and annexed to the Plaint point to a reasonable narrative that lends itself to be subjected to trial. There is nothing so inexplicable and illogical that the case is so meritless on the ground of limitation that the Suit should be thrown out without trial.

27. Both sides have cited case law in support of their respective positions. Suffice it to say, the well-known principles gleaned from them are unexceptionable. What has to be seen in proceedings under Order VII, Rule 11 of the CPC is whether, the factual matrix lends itself to these principles being applied for rejection of the Plaint. I have explained my reasons on facts as to why the captioned Interim Application must fail. To avoid prolixity, I am refraining from extracting from the case law cited. Suffice it to say, the situation at hand requires evidence to be examined to deal with the very contentions of the Applicant that have been articulated above.

28. In the result, the Interim Application No. 3827 of 2024 in Suit No. 326 of 2023 is ***dismissed***. Costs would ordinarily follow the event, but consideration of costs for this round of litigation is deferred for consideration at a subsequent stage of the proceedings.

29. All actions required to be taken pursuant to this order, shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN J.]