

(2014) 01 BOM CK 0226

In the Bombay High Court

Case No : Civil Revision Application No. 231 of 2012

Bebibai Santuji Naikwadi

APPELLANT

Vs

Sow. Kalpanabai Kashinath Sangamnerkar

RESPONDENT

Date of Decision : 21-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2014) 01 BOM CK 0226

Hon'ble Judges : A.I.S. Cheema, J

Bench : Single Bench

Advocate : S.T. Shelke, Advocate for the Appellant; A.N. Nagargoje and A.G. Ambetkar, Advocate for the Respondent

Final Decision : Dismissed

Judgement

A.I.S. Cheema, J.—Civil Revision Application is admitted. With the consent of counsel for both sides, heard finally.

2. The Petitioners herein are the original defendant Nos. 3 & 4 in Special Suit No. 71/2010 pending before Civil Judge, Senior Division, Sangamner. They have filed the present Civil Revision Application against respondent No. 1 (Original plaintiff) and respondent Nos. 2 & 3 (Original defendant Nos. 1 & 2). I will refer the parties, as arrayed in the trial Court.

3. Defendant Nos. 3 & 4 filed application before trial Court under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC), to reject the plaint on the ground of limitation. According to them, on the basis of sale-deed dated 03.05.1994 and revenue entries plaintiff was knowing regarding name of deceased Vasant mutated as owner. Thus, the suit filed before the trial Court was barred by limitation. The trial Court heard the parties, and the application came to be rejected, vide order dated 09.02.2012.

4. The learned Counsel for defendant Nos. 3 & 4 (present petitioners) has taken me through the plaint filed in the trial Court for deciding the matter. He submits

that the suit deserves to be rejected, as the real intention of the plaintiff is to claim that the sale-deed dated 03.05.1994 was obtained by fraud, although, the prayer made in suit is to set aside the sale-deed dated 20.09.2010 executed in favour of defendant Nos. 3 & 4.

As against this, the learned Counsel for plaintiff-respondent No. 1 has submitted that the property described in para Nos. 1 & 2 of the plaint were purchased by the plaintiff and deceased Vasant who were part of same family. The Deceased Vasant was brother- in-law of the plaintiff. It is claimed that the suit properties described in para Nos. 1 & 2 of the plaint situated at Gunjalwadi, Tq. Sangamner, District Ahmednagar, had been purchased by deceased Vasantrao and plaintiff and each of them had half share. On 03.05.1994, properties described in para No. 2 of the plaint came to be sold by deceased Vasant and plaintiff to ten persons and at the relevant time, deceased Vasant fraudulently put contents in the sale-deed regarding the property described in para No. 1 of the plaint, so that the same would remain as his exclusive property. After death of Vasant his legal heirs i.e. defendant Nos. 1 & 2 have sold the property described in para No. 1 of the plaint to defendant Nos. 3 & 4 and now plaintiff has come to know about the same. Thus, the suit has been filed by the plaintiff on the basis of her title to challenge the transaction of sale to defendant Nos. 3 & 4 and to claim partition.

5. According to the learned Counsel for plaintiff, in prayer clause (A) of para No. 18 of the plaint, declaration has been sought regarding the transaction done by defendant Nos. 1 & 2 in favour of defendant Nos. 3 & 4 relating to property described in para No. 1 of the plaint, and declaration is also sought that the sale-deed dated 20.09.2010 is not binding on her, and her share in the property. According to him, in the prayer clause (B), wherein it is referred that the suit property be divided and half share be given to plaintiff, it relates to property described in para No. 1 of the plaint. He states that there is no dispute that the property described in para No. 2 of the plaint was sold to 10 persons by plaintiff and deceased Vasant on 03.05.1994 but according to him para added in the sale-deed, with reference to property as described in para No. 1 of the plaint was a forgery done by deceased Vasant, which plaintiff was not aware of.

6. The learned Counsel for defendant Nos. 3 & 4 submits that what is shown by plaintiff is suit to set aside sale-deed dated 20.09.2010, but actually what the plaintiff is seeking to set aside are the contents of that sale-deed dated 03.05.1994. Thus, according to him under Article 58 of the Limitation Act, the suit is time barred. He submits that to avoid limitation, the suit has been filed only regarding the transaction that has taken place in the year 2010 but real intention is different. The learned Counsel for the defendant Nos. 3 & 4 is relying on the case of Hardeh Ores Pvt. Ltd. Vs. Hede and Company, to argue that the real object of the suit is to be seen and the real issue has to be examined. By camouflaging the real issue by intelligent drafting, limitation is sought to be got over, and so plaint should be rejected.

7. The point involved in the present Civil Revision Application is :- "Whether trial

Court acted in exercise of its jurisdiction illegally or with material irregularity by not rejecting the plaint?"

8. I have gone through the judgment cited. The principles laid down are material. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. The averments made in the plaint as a whole have to be seen. The Hon"ble Supreme Court in the case of Hardeh Ores Pvt. Ltd. V. M/s. Hede and Co. (referred supra) has observed that :-

"Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense."

9. The present plaint is thus required to be examined, and when it is gone through, from the plaint, it clearly appears that the plaintiff is not claiming that the sale-deed dated 03.05.1994 as regards selling property described in para No. 2 of the plaint to ten persons, is not binding on her. The plaint mentions that the properties described in para Nos. 1 & 2 of the plaint were purchased by plaintiff along with deceased-Vasant, and those were standing in revenue record on the name of both. Plaintiff is resident of Nashik and she was spending for agricultural operations, while Vasant and his family members stayed at the suit property. She was called on 03.05.1994 by Vasant at Sangamner, and was told that sale-deed is to be executed regarding property described in para No. 2 of the plaint, and (as per the plaint) during that transaction, Vasant fraudulently and illegally got contents put relating to property described in para No. 1 of the plaint without letting plaintiff understand the same. Deceased Vasant did not let plaintiff know changes in the revenue record, and after his death property described in para No. 1 of the plaint has been sold by defendant Nos. 1 & 2 to defendant Nos. 3 & 4 and plaintiff came to know about the same in the year 2010. Thus the suit has been filed.

10. The learned Counsel for defendant Nos. 3 & 4, at the time of arguments referred to the copy of the sale-deed dated 03-05-1994, which on 8th page has in a para reference to survey No. 77/6 and recorded that, that property is to remain as property of ownership of Vasant alone. According to the learned Counsel, this survey No. 77/6 is now converted into gut No. 46 referred to in para No. 1 of the plaint.

The learned Counsel for the plaintiff submits that in the sale-deed deceased Vasant and present plaintiff were arrayed as vendors who were selling out properties (as described in para No. 2 of the plaint) to ten persons and in such transaction between plaintiff and Vasant of one part with the ten purchasers of the other part, para was put with reference to property described in para No. 1 of the plaint which property was not subject matter of the sale-deed at all.

11. Para No. 6 of the plaint mentions that the sale-deed dated 03-05-1994 was not a transaction inter-se between the plaintiff and deceased Vasant. Plaint

further mentions that plaintiff was not aware of such contents and came to know about the same only recently, when defendant Nos. 1 & 2 sold the property to defendant Nos. 3 & 4. Whether or not plaintiff was knowing about such contents since 03.05.1994 would be a matter of fact, and on that basis when right to sue first accrued can be decided. Even if there was knowledge, if that will divest title of plaintiff is question of law. Limitation here is mixed question of law and fact. I do not find, that petitioners are able to show that trial Court committed any illegality or irregularity by not rejecting the plaint.

12. In that view of the matter, there is no substance in the Civil Revision Application, the same is dismissed with no order as to costs.

13. At this stage, the learned Counsel for defendant Nos. 3 & 4- petitioners makes a request to continue interim relief granted by this Court on 13.09.2012 for eight weeks to consider further appeal. Counsel for respondents object. In the interest of justice, interim relief to continue till 14.03.2014.