

(2022) 12 BOM CK 0053

In the Bombay High Court

Case No : Civil Revision Application N O . 108 Of 2022

Sau. Laxmi Yenpreddiwar Shikshan And Others

APPELLANT

Vs

Maroti And Others

RESPONDENT

Date of Decision : 13-12-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Order 7 Rule 11, Order 7 Rule 1(d), Order 7 Rule 11(d), Order 7 Rule 11(d)(b)
Bombay Public Trusts Act, 1950 — Section 50, 50(iv)
Bombay Tenancy And Agricultural Land (Vidarbha Region) Act, 1958 — Section 2(10), 80, 129(b)
Bombay Courts Fees Act, 1959 — Section 4(ha)

Citation : (2022) 12 BOM CK 0053

Hon'ble Judges : M.S. Jawalkar, J

Bench : Single Bench

Advocate : B.B. Pantawane, A.S. Dhore

Final Decision : Dismissed

Judgement

M.S. Jawalkar, J

1. Heard learned Counsel for the applicants and learned Counsel for the respondent Nos. 2 to 4.

2. Being aggrieved by an order dated 31/03/2022 passed by learned Civil Judge, Junior Division, Mul on Exh.109 an application under order 7 Rule 11 (1) (d) of the Code of Civil Procedure rejecting an application filed by defendant nos. 1 and 2, the applicants/defendants prefer this revision.

3. The brief facts of the case are as under :

The applicants (original defendant nos. 1 and 2) have filed an application at Exh.109 for rejection of plaint under order VII Rule 11(1)(d) of the Civil Procedure Code for rejection of plaint on the ground that suit filed by original plaintiffs (non-applicants) is time barred as sale deed was executed on

05/08/1983, the suit ought to have been filed within three years from 05/08/1986 but suit is filed by original plaintiffs (non-applicants) on 18/01/2010.

The another point raised for challenge is that the suit property bearing Survey No.119 of Mouza-Mul being a trust property the original plaintiffs (respondents) have not obtained permission from Joint Charity Commissioner as required under Section 50 of Bombay Public Trust Act.

The another point raised for rejection of plaint is that Sanjay Kalambekar (original defendant no.3) died in the year 1999, but the suit is filed against him in the year 2010 by showing him defendant no.3. Therefore the suit is liable to be dismissed as filed against a dead person.

It is further challenged on the ground that the issue no.6 vide Exh.67 for declaring the sale-deed dated 05/08/1983 was void and inoperative as the original plaintiff did not pay the court fees as per Order VII, Rule 11 (d)(b) of the Civil Procedure Code and on this ground suit ought to have been dismissed. The learned Lower Court rejected the application filed under Order VII Rule 1 (d) of Civil Procedure Code. Hence the present Revision Application is filed.

4. It is the contention of appellants that the suit land S.No.286/1 (New S.No.119), area 0.81 H.R. was donated by defendant no.2 in favour of defendant no.1 which is Trust, registered No. 950-F/920 in view of Order passed by Tahsildar, Mul in Case No.12/Ten.Land/Exemption Cell/Mouza Mul dt. 20/06/1995 and Exemption Certificate under Section 129(b) of Bombay Tenancy and Agricultural Land (Vidarbha Region) Act, 1958, therefore, the suit property is a Trust property and there requires permission from Charity Commissioner under Section 50 of Bombay Public Trust Act before filing of the suit. However, no such permission was sought by plaintiffs. Hence, plaint was liable to be rejected under Order VII Rule 11(d) of the Code of Civil Procedure.

It is further contended that the plaintiffs have initially filed the suit for declaration, perpetual and mandatory injunction. Thereafter, vide amendment application (Exh.26) amended the plaint and seeking the relief of cancellation of sale deed dated 05/08/1983 on the ground that sale deed is void, illegal and inoperative. The plaintiff had knowledge about the sale deed dated 05/08/1983 since inception. Despite knowing all these facts, the suit is filed after three years. Therefore, suit is beyond the period of limitation.

5. Learned Counsel for appellants relied on following citations :

1) Raghwendra Sharan Singh vs. Ram Prasanna Singh (Dead) by L.Rs., reported in AIR 2019 SC 1430.

2) State Bank of India vs. Sagar S/o Pramod Deshmukh and others, reported in 2011(3) Mh.L.J. 71.

3) Saleem Bhai and other vs. State Maharashtra and others, reported in 2033 (2) Mh.L.J. 529.

6. It is the contention of the respondent/plaintiff that, no permission is required as per the provisions of Section 50 of the Bombay Public Trust Act. It is further contended that, the plaintiffs are not beneficiaries of the trust and they are stranger to the Public Trust. Objection as regards to the permission under Section 50 of the Bombay Public Trust Act is not the ground covered under Order VII, Rule 11 of the Code of Civil Procedure.

7. It is specifically contended that the suit property is in their possession right from the beginning and the defendant no. 2 never derived title of the suit property from alleged vendor Sanjay Kalambekar. In fact, Sanjay Kalambekar himself has no title. It is further contended that, issue of limitation as regards to the relief of cancellation of sale-deed dated 05/08/1983 is a mixed question of law and fact cannot be said that the suit is barred by limitation at this stage.

8. So far as valuation is concerned, it is the contention of respondent/plaintiff that in case the respondents fail to comply the directions about deficit Court fee then only plaint can be rejected. It is further contended that, the suit is filed against dead person is not a ground for rejection of plaint under Order VII rule 11 of the Code of Civil Procedure. The transfer of suit property during pendency of the suit is not a ground for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure.

9. Learned Counsel for the respondents relied on following citations :

1) Shakti Bhog Food Industries Ltd. vs. Central Bank of India, reported in 2020(5) Mh.L.J. 1.

2) Chhotanben and another vs. Kirtibhai Jalkrushnabhai Thakkar and others, reported in 2018(5) ALL MR 946 (S.C.).

3) Maharashtra Shetkari Seva Mandal vs. Bhaurao Bayaji Garud, reported in 2020 (2) Mh.L.J. 612.

4) Sainath Mandir Trust, Amravati vs. Vijaya w/o Vithalrao Mandale and others, reported in 2003 (4) Mh.L.J. 187.

5) Mahomed HaSSAN Samru vs. Peer Hazarath Diwanshah Dargah Trust and others, reported in 2002 (3) ALL MR 66.

10. I have gone through the rival contentions of the parties. Perused impugned judgment and considered the citations relied on by both the parties. The application under Order VII Rule 11(d) is filed by the defendants in RCS No.02/2010 in the month of January, 2022 i.e. around 12 years after filing of suit. The contention mainly raised about rejection of plaint as permission was not sought as suit is against Trust property under Section 50 of the Bombay Public Trust Act before filing of suit. Secondly, it is contention that suit is not within limitation. Thirdly, suit is filed against dead person and fourthly, there is no proper valuation and no proper stamp duty is paid.

11. Initially suit was filed by plaintiffs for declaration, perpetually and mandatory

injunction thereafter, vide amendment application, relief of cancellation of sale-deed dated 05/08/1983 being void, illegal and inoperative. As cancellation of sale-deed is filed after three years, as per defendants, it is beyond limitation and suit is also not properly valued.

12. The learned Counsel for applicant relied on Raghwendra Sharan Singh (supra) wherein question involved was that suit for declaration, that gift deed executed in favour of defendant is sham transaction and not binding. Suit is filed after more than 22 years of execution of registered gift-deed. As plaintiff was not praying for any declaration to set aside gift deed in that case the Hon'ble Apex Court held that the suit would be clearly barred by limitation.

However, in present matter, the plaintiff claimed that they were not having any knowledge of the sale-deed dated 05/08/1983 executed by Sanjay Kalambekar in favour of defendant No.2 and about the entries taken in favour of defendant no.2 in Revenue Record. Suit property was in their possession right from the beginning. The defendant No.2 never derived any title in the suit property from the alleged vendor Sanjay Kalambekar.

13. The learned Trial Court rightly appreciated that this mixed question of law and facts can be considered after adducing evidence to that effect. The learned Counsel for applicant also relied on State Bank of India (supra). There is no dispute over the preposition of law that, in order to consider the question of rejection of the plaint under Order VII Rule 11(d) of the Civil Procedure Code, the facts as are appearing from bare reading of the plaint are required to be considered and not the facts stated in the defence by the defendants.

14. The learned Counsel for the applicant also relied on Saleem Bhai and others (supra) in support of his contention that the learned Trial Court can exercise power under Order VII Rule 11 of the Civil Procedure Code at any stage of the suit before registering plaint or after issuing summons to the defendants at any time before the conclusion of trial.

15. However, the learned Trial Court has not rejected the application filed by the defendants on the ground that it is filed at belated stage, but, application is rejected on the ground that the question of limitation is mixed question of law and facts so also the suit against one of the defendants who is dead is not the ground for rejection of the plaint. It is also observed by learned Trial Court that bar under Section 50 is not applicable in present matter as prima facie, the plaintiff is stranger for the Trust and he is agitating his civil rights.

16. As against this, learned Counsel for respondents relied on Shakti Bhog Food Industries Ltd. (supra) wherein it is held by the Hon'ble Supreme Court in paragraph No.13 which reads as under:

"13. It is well established position that the cause of action for filing a suit would consist of bundle of facts. Further, the factum of suit being barred by limitation, ordinarily, would be a mixed question of fact and law. Even for that reason,

invoking Order VII, Rule 11 of the Civil Procedure Code is ruled out.”

17. The learned Counsel for respondents also relied on Chhotanben (supra) in support of his contention that the suit is filed within time after getting knowledge about the execution of registered sale-deed. The Hon’ble Apex Court held that in this context, the learned Trial Court opined that it was a triable issue and declined to accept the application filed by the respondents for rejection of plaint under order VII Rule 11 (d). That view commends to the Hon’ble Apex Court.

18. The learned Counsel for respondents also relied on Maharashtra Shetkari Seva Mandal (supra) this Court while applicability of Section 50 of the Bombay Public Trust Act held that:

“The suit has been filed for a declaration of the plaintiff’s title over the suit property and for a perpetual injunction. Section 50(iv) of the Bombay Public Trusts Act would come into play when an injunction is sought against a public trust. The sanction of the Charity Commissioner for institution of a suit for the aforesaid reliefs is required only if it is filed by “a person having an interest”. The suit must be instituted for the reliefs stipulated under Section 50. These reliefs mainly relate to the working of the trust and its trustees. Therefore, permission of the Charity Commissioner would be required when a suit is instituted by “a person having interest” for a decree in terms of the reliefs delineated in section 50. The declaration and injunction sought by the plaintiff relate to his contention about his title to the suit property. Apart from this the plaintiff is not “a person having interest” as defined under section 2(10) of the Act. Section 80 would not come into play in the present case as it is only such questions which can be decided or dealt with by any officer or authority under the Act which cannot be decided by Civil Court. The cause of action giving rise to the present suit and the reliefs claimed therein cannot be decided by any officer or authority under the Act. Therefore, the right claimed in the present suit for a declaration and an injunction in respect of a property over which the plaintiff, who is not a “person interested” claims title cannot be said to be barred under section 80 of the Act nor is the consent of the Charity Commissioner required prior to institution of such a suit.”

Similar is the view taken in Sainath Mandir Trust, Amravati (supra) and Mahomed Hassan Samru (supra).

17. Thus, in view of the citations referred above, the reliefs claimed does not qualify any of the clauses (a) to (q) referred in Section 50 of the Bombay Public Trust Act (Maharashtra Public Trusts Act). For instituting the suit, as plaintiffs are claimed to be the owner of the suit property and they are exercising their civil rights, Section 50 of the Bombay Public Trusts Act will not attract.

18. As discussed above, it is claimed by plaintiffs that they have no knowledge of execution of sale-deed. Thus limitation start running from the date of knowledge. Thus, when plaintiffs got knowledge about sale deed is question of fact which only can be answered after adducing evidence. Thus it is triable issue and it can

be decided only after adducing evidence by both the parties, whether the suit is within the limitation or beyond limitation. So far as Court fees is concerned, the learned Trial Court directed to value the suit property as per Section 4 (ha) of the Bombay Courts Fees Act, 1959 in respect of relief of cancellation of sale-deed dated 05/03/1983 and was directed to pay proper Court fees. So far as a suit against a dead person is concerned at the most effect will be dismissal of suit against that person. The learned Trial Court rightly appreciated legal position and considered the citations referred by both the parties, I do not see any reason to interfere in the same. Hence, the revision application is rejected with costs.