



IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

CIVIL REVISION No. 539 of 2023

RAJJAK AND OTHERS

Versus

BRAJBALAL BAI AND OTHERS

Appearance:

Shri Rishiraj Trivedi, learned counsel for the applicants.

Shri Vinay Gandhi, learned counsel for non-applicants No.1 to 4.

ORDER

(Reserved on 01.07.2024)

(Pronounced on 14.10.2024)

1. This Revision under Section 115 of the CPC has been preferred by defendants 1 and 5/applicants being aggrieved by the order dated 21.07.2023 passed in regular Civil Suit No.21-A/2022 by the Civil Judge Senior Division, West Nimar Mandleshwar whereby an application under Order 7 Rule 11 of the CPC has been rejected.
2. The plaintiffs/non-applicants 1 to 4 have instituted an action



before the trial Court submitting that they are the owners of the disputed land (motor garage). The same was purchased by their ancestors on 08.09.1944 in an auction proceeding. The plaintiffs have always been in possession of the land. On 19.07.1990 the land was got diverted by predecessors of the plaintiffs after which construction was made over it. The defendants do not have any title to the suit property. Defendant No.1 through her power of attorney holder defendant No.5 had instituted an action against them in the year 2010 for permanent injunction with respect to the suit property which was dismissed by judgment and decree dated 18.03.2019. Likewise proceedings were instituted before the Tehsil Court which were also dismissed on 12.02.2019. In the aforesaid civil suit an application under Order 39 Rule 1 and 2 of the CPC had been filed by present plaintiffs for protection of their possession which was allowed by order dated 23.10.2018. The defendants are threatening to forcibly dispossess them from the suit land taking advantage of being recorded in the revenue records. On 20.09.2018 defendant No.1 has executed a sale deed with respect to part of the suit land in favour of defendant No.2 and thereafter on 20.09.2018 in favour of defendant No.3. During pendency of the suit sale deed has been executed by defendant No.4 in favour of defendant No.7 on 27.06.2019.

3. On such contentions the plaintiffs have instituted an action for



declaration of their title to the suit property, declaration that the sale deeds executed by defendant No.1 in favour of defendants No.2 and 3 and by defendant No.4 in favour of defendant No.7 are null and void and for permanent injunction restraining the defendants from interfering with their possession over the suit land.

4. Upon service of summons upon him, defendant No.5 filed an application under Order 7 Rule 11 of the CPC for rejection of the plaint submitting that the same is barred by time and that the claim has neither been properly valued nor adequate Court fees has been paid thereupon. The application was contested by the plaintiffs and has been rejected by the trial Court by the impugned order.

5. Learned counsel for defendants 1 and 5 has submitted that the impugned order is illegal and contrary to law. Title of plaintiffs was challenged by defendants 4 to 16 in the earlier Civil Suit No.31-A/2010. In the year 1989 common male ancestor of defendants No.4 to 16 namely Madanlal had sent telegram in respect of the suit properties to common male ancestor of plaintiffs wherein the dispute as regards title to the suit property was raised. The suit is hence clearly barred by time. Alternate pleas have been taken by the plaintiffs for pleading acquisition of title. They are claiming title on the basis of auction sale as well as adverse possession which is not permissible, since they are mutually destructive pleas. The claim has



been valued only in respect of the sale deeds but has not been valued in respect of the remaining suit properties. The claim is neither properly valued nor adequate Court fees has been paid thereupon. The plaint is hence liable to be rejected.

6. Per contra, learned counsel for the plaintiffs has submitted that the suit cannot be said to be apparently barred by time on the basis of the pleadings made in the plaint. All the issues raised by the defendants are matter of evidence and cannot be considered at the present stage. The claim has been properly valued and adequate Court fees has been paid thereupon. The impugned order is hence not liable to be interfered with.

7. I have considered the submissions of the learned counsel for the parties and have perused the record.

8. Even if plaintiffs are taking two contradictory and even mutually destructive pleadings i.e. one of acquisition of title by virtue of adverse possession and the other acquisition of title on the basis of the auction sale, the suit cannot be said to be barred by any law for that reason. It is always open for the plaintiffs to take mutually contradictory and even destructive pleas in the plaint and only for that reason the plaint cannot be rejected.

9. The plaintiffs have pleaded in the plaint that the cause of



action accrued to them upon execution of sale deed by defendant No.1 in favour of defendants No.2 and 3 and on 18.03.2019 when the suit of defendant No.1 was dismissed and when threat of dispossession was given. The claim for declaration of title would be governed by Article 58 of the Limitation Act which prescribes a period of three years for instituting a suit for obtaining any declaration and the period of limitation begins when the right to sue first accrues. The same has to be seen from point of view of the plaintiffs and not the defendants. Suit for declaration of title can be filed within a period of three years when the plaintiffs feel threat to their title. It is not for the defendants to contend that title of plaintiffs was threatened earlier and that the right to sue had accrued then itself. It is on the basis of the perceived threat of plaintiffs that the period of limitation would begin. Though defendants have contended that in certain communications in the year 1989 and in the earlier suit itself, title of plaintiffs was denied but that would not be conclusive of the matter because plaintiffs did not feel any threat to their title at that time. Whether the right to sue or the cause of action had accrued to the plaintiffs as contended by them or as is being contended by the defendants would be a matter of evidence to be adjudicated upon by the trial Court at the appropriate stage of proceedings. For the present, on the basis of pleadings as contained in the plaint and the reply to the counter claim, it cannot be said that the claim is admittedly barred by time.



10. The plaintiffs have valued their claim for declaration that the sale deeds are null and void on the basis of the aggregate sale considerations of all the three sale deeds and have paid fixed Court fees thereupon since they are not parties thereto. The said valuation and payment of Court fee is perfectly justified and has not even been questioned by the defendants. Plaintiffs have valued their claim for declaration of title at Rs.10,000/- and have paid fixed Court fees thereupon. It has not been shown by the learned counsel for defendants 1 and 5 that the valuation for relief of declaration of title ought to be on the basis of sale considerations mentioned in the sale deeds executed with respect to part of the land or the market value. The claim for declaration of title is an independent claim and can be independently valued by plaintiffs as has been done by them and fixed Court fees has been paid thereupon. There is no requirement that valuation for the purpose of declaration of title has to be on the basis of the market value of the disputed property. The plaintiffs have specifically averred that they are in possession of the disputed property and have prayed for permanent injunction with respect thereto. They have valued their claim for permanent injunction at Rs.1,000/- and have paid Court fees of Rs. 120/- thereupon which is *prima facie* reasonable.

11. Thus, in view of the aforesaid discussion, I do not find any error having been committed by the trial Court in passing the



impugned order rejecting the application under Order 7 Rule 11 of the CPC preferred by defendant No.5. The grounds as regards limitation, valuation and payment of Court fees are such grounds which can only be determined by the trial Court during the proceedings of the suit at the appropriate stage wherein any observation made in the impugned order or this order would not come in the way. Thus finding no case for interference, the impugned order is affirmed as a result of which the revision is dismissed.

(PRANAY VERMA)
JUDGE

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