

CNR No.MHPA020011222018.

R.C.S.No.01/2018.
Mohd.Habiboddin Vs. Mohd.Muniroddin.

ORDER BELOW EXH.17
(Passed on 31/07/2019)

Perused applications and say thereon. Heard both sides at length.

1. Defendant has filed an application under Order VII Rule 11 of the Code of Civil Procedure for rejection of plaint.

2. The defendant contended that the plaintiff has not tenant of the suit property. He has no document of lease deed. Therefore he has no right over the suit property and he cannot claim any status over the suit property. Thus there is no cause of action to the plaintiff. Further the valuation of the suit property is Rs.13 lakh, whereas the plaintiff is shown it as Rs.1000/-. Thus the suit is not properly valued. Moreover the suit of the plaintiff is barred by limitation. Therefore he prayed for allowing the application.

3. Per contra, the plaintiff submitted that present suit is filed by the plaintiff under section 6 of Specific Relief Act. Therefore for instituting the suit it is not necessary that the plaintiff have any title over the suit property. For deciding limitation evidence is necessary. Thus at this stage it cannot be considered that suit is barred by limitation. Further the plaintiff only claimed relief of recovery of possession. Accordingly sufficient court fees is paid by the plaintiff. All the ground mentioned by the defendant are not satisfied the criteria as provided under Code of Civil Procedure. Present application is filed by the plaintiff only intention to prolong the matter. Accordingly he prayed for rejection of the application.

4. On hearing rival contentions of plaintiff and defendant following points are arose for determination to which I have recorded finding with reasons thereon.

| Sr.No. | Points | Findings |
|--------|--|----------------------|
| 1 | Whether the plaintiff has no cause of action ? | ... in the negative. |
| 2 | Whether the suit is not properly valued ? | ... in the negative. |
| 3 | Whether the suit is bard by limitation ? | ... in the negative. |
| 4 | What order ? | As per final order. |

Reasons

As to point No.1 to 4.

5. Perused the plaint and written statement. The plaintiff filed the suit for recovery of possession under section 6 of Specific Relief Act 1963. He contended that, he is a tenant of the suit property since 1978. Accordingly he paid monthly rent of Rs.300. He filed document with that regard on record. Further the defendant illegally dispossess the plaintiff. It means the plaintiff has cause of action as far as the contention of defendant is concerned that the plaintiff has not filed any document on the record, is concered for that purpose details trial is necessary. At this stage it cannot be considered that the plaintiff has no cause of action only on the basis of non filing of document.

6. As far as the second contention of the defendant is concerned it is regarding valuation of court fees. Present suit is filed by plaintiff for recovery of possession under section 6 of Specific Relief Act. Therefore as per section 6 (1) (j) of Maharashtra Court Fees Act court fees for the recovery of the possession is Rs.100/-. Accordingly the suit of the plaintiff is properly valued. Hence the contention of the defendant is not maintainable. As far as the third contention of the defendant is concerned it is in respect of limitation of the suit. Issue of limitation is mix question of fact and law. For that purpose detail evidence is necessary. At this stage, without any evidence the issue of limitation cannot be decided. Thus, the said issue of limitation can be raised by the defendant at the time of trial.

7. Considering above observation point no 1 to 3 are answering the negative. For answering for point no 3 I proceed to pass following order.

Order

Application below Exh. 17 is hereby rejected.

Date: 31/07/2019.

(Vidya S. Kasbe)

3rd Jt. Civil Judge Junior Division, Parbhani.