

Court of Additional District Judge Ist, Gaya

Title Suit No. 05/2015

31.08.2022 (1). Both sides file Hazri.

(2). This order of mine shall dispose the petition dated 06.05.2022 filed by the defendant No. 1 under Order 7, Rule 11(d) of the C.P.C. on the averments that probate petition is not maintainable and the averments made in the petition are not in consonance with the prayer made. The applicant has filed a probate case, but the relief has been sought for grant of letter of administration and the probate is not in accordance with the Act itself and the basic requirement of the probate petition has not been complied and thereafter, he prayed for rejection of the plaint in view of the Order 7, Rule 11(d) of the C.P.C.

(3). The rejoinder to this application was filed by the plaintiff on 20.06.2022 alleging that the plea taken by the defendant is baseless and legally misconceived and stated that filing of probate case for grant of probate in regard to Will was never barred under the Act and the relief sought for grant of letter of administration of probate case is totally immaterial and in no way, it affects merit of the case and this application has been filed by the defendant just to linger on the matter and then he prays for rejection of the application.

(4). Heard both sides and perused the case record.

(5). From perusal of the case record, it reveals that the probate case was filed on the averments that one Kulwanti Devi has executed Will in favour of the applicant which was duly registered with the relief that he be declared that Kulwanti Devi executed the registered Will in favour of the applicant and she acquired right, title and interest in the property mentioned in schedule- A and thereafter, she prayed for granting letter of administration in favour of the applicant.

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(6). The Order 7, Rule 11(d) of the C.P.C. - Rejection of plaint – The plaint shall be rejected in the following cases :-

(a).

(b).

(c).

(d). where the suit appears from the statement in the plaint to be barred by any law;

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(7). To decide an application under this sub-rule, the averments in the plaint are germane. The pleas taken by the defendant in the written statement would be wholly irrelevant. It should be looked into if on a meaningful formal reading of plaint, it is manifestly vexatious and meritless in the sense not disclosing a clear right to sue, the court should exercise power under Order 7, Rule 11(d) of the C.P.C.

(8). Thus, this sub-clause (d) came into play only when the pleadings in the plaint are sufficient to disclose the bar to the suit and not otherwise. The conclusion regarding bar to suit cannot be arrived at on the basis of materials

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extraneous to the pleadings in the plaint. It is settled law that when several other factual aspects are also to be gone into while deciding a question of law involved incidently, rejecting a plaint cannot be sustained.

(9). Here on perusal, the plaint of the case, it reveals that no law has barred the filing of this suit, nor in application dated 06.05.2022 the defendant has mentioned that law. Moreover, the defendant has taken only plea of some formal defects in filing probate which comes under the factual aspects of a case and all such facts are to be gone into at the time of trial. Also this application has been filed at the fag end of the trial, when the case was fixed for final argument of the case.

(10). So, in view of the above discussions and factual circumstances, it does not reveal that the plaint was barred by any law. Accordingly, the court finds no merit in the application dated 06.05.2022, hence this application is rejected. Now put up the case on 15.09.2022 for argument of case.

(Dictated)

Sd/-

Addl. District Judge-Ist, Gaya

31.08.2022