

Regular Civil Suit No.74/2023
Order below Exh.18 filed under
the provisions of O.VII, r.11(a) of C.P.C.

- (1) Heard both the Ld. Advocates for the parties at length. Perused the present application and it's reply filed by plaintiff vide Exh.28. I have also gone through records of the case.
- (2) Present application is tendered by Defendants under the provisions of O.VII, r.11(a) of C.P.C. for rejection of plaint, on the ground that the suit of the plaintiff have violated the factual and legal provisions.

It is averred in present application that there is no cause of action to file this application, the Plaintiff is the son of the first wife of the Defendant No.1. It is averred that the property, being revenue survey no.649 (old revenue survey no.269/paiki 1), is in the name of Defendant No.1 and his brother Gagubhai Dhanabhai Dangar. The Plaintiff have acquired the properties situated at survey no.240 and 241 in heirship. It is also averred that the property situated at revenue survey No.169 and 650 are in the name of the Defendant no.1 and the properties alongwith revenue survey no.649 are self earned properties of the Defendant no.1. It is also averred that the person can make the arrangements of the self earned properties as per the wish and will of the owner and thus, the Plaintiff do not have any cause of action to bring this suit. And thus filing this application, the Defendant have prayed that the suit and the injunction application are not maintainable under any law and have prayed to dismiss the suit and injunction application under O.VII, r.11(a) of CPC.

- (3) In reply to present application, Plaintiff have denied all the facts and averment made by Defendant and have filed reply vide Exh.28. It is averred that, in present case, provisions of O.VII, r.11(a) is not at all attracted, the Defendant have not disclosed how they purchased the suit properties and the fact that the suit property is self acquired can be decided by taking evidence only when the Plaintiff is claiming only his share by meats and bounds, and the suit cannot be rejected under the provision of O.VII when the Defendant themselves admit in the present application that the Plaintiff inherits the suit property situated at survey no.240 and 241. Thus, have prayed to reject the application.
- (4) Heard both the Ld. Advocates. The Ld. Advocate for the Defendant Mr.K.R. Gokani have argued that their arguments be considered as per the averment in the application and have prayed to grant the application whereas the Ld. Advocate Mr. V.S. Mansata, for the Plaintiff have argued as per their reply filed at Exh.28 and have also brought to the notice of the court that the Defendant have admitted in the Para-4 of the present application at page no.2 that “ આ કામમાં રેવન્યુ સર્વે નં.૨૪૦ તથા ૨૪૧ વાળી જે જમીનો આવેલ છે તે બંને મિલકતો વાદીને વારસાઈ હકકથી પ્રાપ્ત થયેલ છે.” Thus, it is argued that when the suit is filed claiming $\frac{1}{4}$ th share in five survey numbers being survey no.240, 241, 169, 649 and 650 and when the Defendant himself admits that in two of the survey numbers the Plaintiff have inherited by way of succession, the present application cannot be allowed as it will result in multiplicity of proceedings and the suit can only be brought to its logical end by taking evidence and thus

have prayed to reject the application with cost.

- (5) Considering the arguments advanced by the Ld. Advocates for the parties and pleadings, the present application is filed by Defendant under the provisions of O.VII, r.11(a) of C.P.C. Therefore, to decide the present application, it is necessary to have the provisions of O.VII, r.11(a) of C.P.C. and the same is reproduced here.

C.P.C. ORDER-VII, R.11.

Rejection of plaint.--

The plaint shall be rejected in the following cases:-

- (a) **where it does not disclose a cause of action;**
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of Rule 9;

PROVIDED that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-

paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

- (6) On perusing the aforesaid provision, it clearly appears that the provisions of this rule are mandatory and it can be invoked at any stage of the suit. Provisions of O.VII, r.11(a) can be invoked at any stage of the proceedings and also in order to invoke the provisions, no such application is also requires. Court itself can invoke the same, if the Court found that the provisions are attracted in the case.
- (7) To substantiate the contention and arguments of parties, if we carefully go through the provisions of O.VII, r.11, we may find that, while considering the application under this provision, Court is not required to take into consideration the defense set up by the Defendant in his written statement and the provisions of O.VII, r.11 are of a mandatory nature and if, Court come to the conclusion that the suit is lacking of cause of action or are lacking from the provisions of Limitation Act, or barred by any law it can be rejected at any stage of the proceedings.
- (8) Keeping in mind aforesaid provisions and object of a rule, if we go through the pleadings of plaintiffs which he has made in plaint, we may find that, to decide the present application, only the averment made in the plaint should be read and the defense forwarded by the Defendant is not to be taken into account.
- (8.1) If we go through the Plaint, we see that the present suit is filed by the Plaintiff for the partition by way of meats and bounds of the 1/4

th part of his share in the suit property. It is averred that the Plaintiff and the Defendant are the heir of Deceased Rambhai Hirabhai Balasara and the Plaintiff is the son of the first wife, namely, Deceased Maluben Rambhai Balasara, of the deceased Rambhai Hirabhai Balasara and the Defendnt no.1 is the second wife of the deceased Rambhai Hirabhai Balasara and Defendant No.2 and 3 are son of Defendant No.1, whereas Defendant No.4 to 6 are the wife and children of Defendant No.3 and Defendant No.7 & 8 are the children of Defendant no.2. It is averred by the Plaintiff that, his mother and father had entered into divorce and he was under the parenthood of his father as per the agreement entered between his parents.

It is also averred that his father entered into second marriage and he as well as the children from the second marriage were residing together and his younger brothers were looking after the agricultural land.

It is averred that the father of the Plaintiff expired on Dt.26/02/2021 and then it was learnt that the entries of succession is made in the revenue records of the agricultural lands of his father. It is also averred that in some of the agricultural properties, his name is entered as legal heir whereas in other properties his name is not entered as legal heir and his 1/4 share is there in those properties. And filing this suit the Plaintiff have prayed that the Plaintiff is the son of deceased Rambhai Hirabhai Balasara and as legal heir, his right is there in every property self earned and owned by the deceased father and as the Defendants have entered their own names in the self earned property of his father, the cause of action arose to file this suit.

(8.2) Going through the Documentary list produced at Exh.03, there are enough evidences in the support of the suit whose appreciation as evidence can be done at later stage. But, if we go through the documentary list, Mark 3/1 is the death certificate of deceased Maluben Ahir and date of death is shown as 03-09-2007. The name of father/mother/husband is not shown, Mark 3/2 is death certificate of deceased Rambhai Hirabhai Balsara and date of death is shown as 26/02/2021, Mark 3/3 is the divorce deed of the father and mother of Plaintiff, Mark 3/4 is the heirship tree of deceased Rambhai Hirabhai Balsara which shows the name of First wife and second wife of the Deceased Rambhai Hirabhai and the names of Plaintiff as well as Defendant No.2 & 3. Now going through the documents being village extract form no.7 of village Vavdi, Ta.Jodiya, being survey no.240, survey no.241 the names of Plaintiff as well as Defendant No.1, 2 and 3 are entered into the revenue records whereas in the revenue survey no.169 name of Defendant no.2 is entered as the Defendant no.1 and 3 have relinquished their rights and it is seen that the Defendant no.1 was the owner of the agricultural land, in the same way revenue survey no.649 and 650 were also owned by the Defendant no.1.

Now, the properties at revenue survey no.649 and 650 have transferred from the owner to other heirs and accordingly names are reflected in the revenue records.

Thus, it is clear that the name of the Plaintiff along with the Defendant is entered in the properties situated at revenue survey no.240 & 241 as legal heir of deceased Rambhai Hirabhai Balsara but in the revenue records of survey no.169, 649 and 650, the owner

is the second wife of the deceased Rambhai Hirabhai Balsara, Defendant no.1, and the same are purchased by the Defendant no.1 as per documents produced by the Plaintiff. As the Defendant no.1 is still alive and she has all the right to manage her property but as the Plaintiff is claiming his right in those three survey numbers also, the issue can only be decided by taking evidence because the Defendant himself admits the share in two of the survey numbers being survey no.240 and 241.

(09) Considering the arguments and discussion made herein-above, and perusing the documents, it seems that the name of the plaintiff is entered in the revenue records of the properties, as legal heir, where his fathers name was reflected being survey no.240 and survey no.241, and it is also admitted by the Defendant, but where the Defendant no.1 was shown as the owner, Deviben Rambhai Balasara, the Plaintiff, cannot claim any right, as legal heir of Maluben Rambhai Balasara or Rambhai Hirabhai Balasara, he can only claim right in the properties which are /were in the name of deceased Rambhai Hirabhai Balasara, but the three survey numbers being 169, 649 and 650 are in question and the Defendant have not disclosed how they inherited them. Now, when the Defendant have themselves admitted that the name of the Plaintiff is entered in the revenue records of survey no.240 and survey no.241 by way of succession, the fact that whether the survey no.169, 649 and 650 are the self acquired property of the Defendant or the ancestral property of the father of the Plaintiff can only be decided by taking evidence and cannot be decided by way of this application, because this suit is filed for the partition of $\frac{1}{4}$ th part of suit property by meats and

bounds, which includes five survey numbers and in two of the survey numbers the Defendant have admitted the share but the partition is not made by means and bounds. Thus, Defendant have not succeeded to show that the provisions of O.VII r.11(a) are attracted. The points which are taken by the Defendant in the application filed at Exh.18, does not attract the provisions of O.VII r.11 (a) and thus, this Court is of the opinion that the provisions of O.VII, r.11(a) are not attracted here and there is cause of action to file the suit and as a result, present application does not require to be allowed and hence I pass following final order.

-: O R D E R :-

Present application of the Defendant filed under the provision of O.VII r.11(a) of the Code of Civil Procedure vide Exh.18 is hereby rejected.

No order as to costs.

This order pronounced in the open Court on this 25 th Day of March, 2025.

Place: Jodiya

Date : 25-03-2025

(Pankaj Sudhirbhai Shah)
Principal Civil Judge,
Jodiya, Dist.Jamnagar
GJ01414

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