

OS No. 37/22

Parties absent. Heard further arguments on I.A.No. 10. Perused records.

The I.A.No. 10 is filed by the defendants nos.9 and 14 to 16 U/o 7 Rule 11(a) and (d) R/w Sec 151 of CPC seeking rejection of plaint on the ground that there is no cause of action to the suit and the cause of action narrated by the plaintiffs are concocted one.

The application is supported with the affidavit of defendant no.15 who has sworn to the facts reiterating his written statement averments.

It is further stated that the defendant no.7 has executed a release deed in favour of the defendant nos.6 and 8 and now the plaintiff by colluding with the defendant no.7 has filed the present suit. Further it is stated that the plaintiffs have not narrated any aspects regarding the previous suit in OS No.127/2012 and as such the suit is not maintainable and the plaint is liable to be rejected. On these

grounds and such others it is prayed for allowing the application. Per contra the learned counsel for the plaintiff filed objections denying the application averments. It is further stated that any suit or compromise decree or any kind of partition which takes places after amendment brought to Hindu Succession Act, the same will not bind the rights of the plaintiffs over the suit schedule property. Further it is stated that the cause of action to the suit is specifically pleaded. It is also stated that the plaintiffs are not parties to the suit in OS No.127/2012 which was compromise on 06.04.2018. On these grounds and such others it is prayed for rejection of the application.

The learned counsel for the defendant no.9 and 14 to 16 have also submitted his written arguments reiterating the application averments.

As aforesaid the further arguments were also heard today.

The suit of the plaintiff is one

for the relief of partition and separate possession. The defendant nos.9 and 14 to 16 have sought for rejection of the plaint mainly on the ground that there is no cause of action to the suit and that the disposal of previous suit as not been disclosed by the plaintiffs in their pleadings.

In the page No.3 para No.5 of the plaint, the plaintiffs have specifically pleaded the cause of action to institute the present suit. The cause of action is a bundle of facts which leads to filing of a suit by a party. Whether the plaintiffs prove their case or not : or whether they prove the cause of action or not is matter of trial. When the plaintiffs have made out a prima facie case to go into the trial of the matter, the plaint cannot be rejected by the court. The matter needs to be adjudicated on merits.

In so far as disposal of OS No.127/2012 is concerned, the plaintiffs claim that they are not parties to the said proceedings.

That a part the defendant nos.9 and 14 to 16 are not seeking rejection of the plaint on the ground of the suit being barred by principle of res - judicata. Thus the plaint cannot be rejected on the ground of non disclosure of the previous suit.

In so far as the question of limitation, if any, is concerned, the same is mixed question of law and facts. The same cannot be a ground for rejection of the plaint. Thus for these reasons this court is of the considered opinion that the defendant no.9 and 14 to 16 have not made out any sufficient grounds for rejection of the plaint. In the light of foregoing discussions this court proceeds to pass the following

ORDER

I.A.No. 10 filed by the defendant no.9 and 14 to 16 U/o 7 Rule 11(a) and (d) R/w Sec 151 of CPC is hereby rejected subject to payment of cost of Rs.500/-.

For plaintiff evidence by
29.07.2026

Senior Civil Judge & JMFC.,
Challakere.