

MHKO020021922021



ORDER BELOW EXH. 30 IN SPL. CIVIL SUIT NO. 242/2021

1. The present application is filed by the defendant Nos. 4 to 9 under Order VII Rule 11 of the Code of Civil Procedure. In the present application, they have submitted that the plaintiff has filed the present suit against the Government officers i.e. the defamation Nos. 2 and 3, without complying with the provision of Section 80 of the Code of Civil Procedure. Therefore, the suit is not maintainable and the plaint should be rejected under Order VII Rule 11 of the Code of Civil Procedure.

2. On 27.10.2021, the plaintiff has opposed the application by submitting her reply at Exh. 35. The plaintiff has denied the application by contending that the application is false and mischievous. The defendant Nos. 4 to 9 have no right to file the present application for the cause of defendant Nos. 1 to 3. The plaintiff is the legal heir of the defendant No. 4 and the suit is for partition of the suit property in which the plaintiff has share. Therefore, the application should be rejected.

3. The present application is filed on 06.10.2021 and the reply is filed on 27.10.2021. Since then, the present application is pending for arguments. Despite this, none of the party has argued the application today also. Hence, I am deciding the application without arguments.

4. Perusal of Exh. 1 reflected that the suit is filed for partition, separate possession of the share and permanent injunction. In the application, the defendant Nos. 4 to 9 have objected the plaint on the ground that neither mandatory pre-suit notice as per Section 80 of the Code of Civil Procedure is issued by the plaintiff before filing of the suit nor the plaintiff has sought waiver of the notice from the court. From the perusal of the plaint, it revealed that the defendant Nos. 1 to 3 are the State and State Authorities, while the defendant Nos. 4 to 11 are private parties.

5. From the plaint, it is also clear that the plaintiff has made main prayer regarding partition and separate possession of the share in the suit property. Further, permanent injunction is also prayed against the defendant Nos. 2 and 3 for restraining these defendants from disbursing the amount of compensation for acquisition of land and for restraining them from changing the mutation entries. In such circumstances, apparently the suit is not merely against the Government authorities. It is settled position of law that the plaint could be rejected as a whole but not in a part. As already mentioned, the plaintiff has prayed for partition of the suit property alleging that it is ancestral property and she has right, interest and share in the same. In such circumstances, the plaint could not be rejected at this stage. Hence, I pass the following order, in the interest of justice -

ORDER

The application Exh. 30 is hereby rejected.

Date : 18.09.2024

(Smt. P. L. Gupta)

6th Jt. Civil Judge Senior Division,
Kolhapur