

IN THE COURT OF THE CIVIL JUDGE CHITTAPUR

Present
Subhashchandra Rathod
B.A. LL.M.
Civil Judge & JMFC.,
Chittapur

O. S. NO: 43/2016

DATED THIS THE 28th DAY OF FEBRUARY - 2019

Gobrya S/o Bali
(By.Smt. M.V.L. Advocate)

.....Plaintif

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V/S

Harishchandra S/o Limbya
(By Sri G.R.V. Advocate)

... Defendant

ORDER ON I.A. No. IV

The defendant has filed IA No.IV U/O VII Rule 11 (a) of CPC requesting to reject the plaint.

2. The defendant in his affidavit annexed with the I. A. No. IV contended that, in para nO. 4of the plaint the plaintiff has stated that, the defendant is ownership and possessor of Sy. No.88/5 measuring 2 acres 17 guntas. It is incorrect to state that, there is wal more that 100 years old which separates the Sy. No. 73 and 88/5. The defendant got surveyed the land in 2015 and submitted

the report. The averments of the plaint shows that the plaintiff intended to raise the boundary dispute with the defendant. In this regard the civil suit is not maintainable. The provision of Land Revenue applies hence the suit is liable to be dismissed. The suit is also not maintainable U/O 2 R 2 of CPC. Further the plaintiff has not stated whether the suit land is agricultural land or non agricultural land and also not seeking he relief of declaration of title. For the above said reasons the suit filed by the plaintiff is not maintainable as there is no cause of action. The cause of action shown by the plaintiff is fiction of the plaintiff. Hence prays to dismiss the plaint with cost.

3. ON the other hand the plaintiff has filed objection to present application and contended that, the reasons stated in the application are not tenable. For rejection of plaint only the plaint averments has to be looked into and not written statement filed by the defendant. Cause of action is bundle of facts and mix question of law and fact. The application is filed only to delay the proceedings, hence prays to reject the application with costs.
4. I have heard both side and perused the materials placed on record.
5. The following points arise for my consideration.

P O I N T S

1. *Whether the plaint filed by the plaintiff deserves to be rejected for non-disclosure of cause of action ?*
 2. *What order?*
6. My findings on the above points are as under;
Point No.1: In the Negative
Point No.2: As per final order, for the following;

R E A S O N S

7. **Point No.1:** During the course of hearing the counsel for the defendant submits reiterating the facts stated in the application and in addition to it he submits that, the plaintiff without applying for form No.10 and the plaintiff suppressing the fact regarding existence of property of third person between the suit property and property of defendant. The defendant is a poor person the documents filed by the defendant clearly go to show that, the suit filed by the plaintiff is false and only to harass the defendant, the plaintiff has filed the present suit and prays to reject the plaint. On the other hand the counsel for the plaintiff submits reiterating the contentions of objection and prays to reject the application.
8. I have gone through the plaint averments and the entire contention taken by the defendant. As rightly contented by the

counsel for the plaintiff the contentions of the defendant cannot be looked into at this stage while dealing application filed U/OVII R 11 of CPC. The present suit is for the relief of injunction and in the plaint at para No. 2 the plaintiff described the suit property. Further the plaintiff is owner and possessor of the suit property. The defendant is no way concerned to the suit property. In the first week of March 2016 started to dismantle the wall existing between the suit land and his land saying that, the plaintiff has encroached his land and thereby the defendant interfering into possession of the plaintiff. The facts pleaded in the plaint disclose the cause of action against the defendant. Hence, the application filed by the defendant deserves to be rejected. Hence, point No.1 is held in the negative.

9. **Point No.2:** In the result, I proceed to pass the following;

ORDER

I.A. No.IV filed by the defendant U/O VII Rule 11

(a) of C.P.C. is hereby rejected.

No order as to costs.

(Dictated to the Stenographer, directly on computer, typed by him, revised and corrected by me and then pronounced in the open court on this the 28th day of February 2019)

(Subhaschandra. Rathod)
Civil Judge, Chittapur