

COMMON ORDER BELOW EXH.1 & 27 IN SPLCIVIL SUIT NO.934/2012

1] Defendant has filed application Exh.27 U/O 7 Rule 11(a)(b) and (d) of Code of Civil Procedure raising objections to maintainability of the suit.

2] Plaintiff filed say at Exh.31 and opposed the application.

3] I have heard learned advocate Shri. Shaikh for defendant and learned advocate Shri. Kulkarni for plaintiff. I have also perused written notes of argument submitted by defendant.

4] On the basis of contentions and submissions, following points arises for my determination and my findings with reasons are given as below :

<u>Points</u>	<u>Findings</u>
1] Whether it is established that, the suit is under valued ?	.. In the negative.
2] Whether it is established that, the suit is barred by law ?	.. In the affirmative.
3] Whether it is established that, the plaint does not discloses cause of action?	.. In the affirmative.
4] What order?	.. Plaint is rejected.

R e a s o n s

As to Points No.1 & 2:

5] Plaintiff and defendant are husband and wife. Plaintiff has filed present suit for declaration that, he is owner of the suit flat and sought mandatory injunction directing defendant to hand over possession of suit flat. Plaintiff further sought to issue mandatory injunction to sale the suit flat and after paying one time settlement of Rs.5,00,000/- the

remaining amount be credited to the plaintiff. Plaintiff has claimed that, though the defendant is co-owner of the suit flat as the registered agreement was executed in the name of plaintiff and defendant, but the suit flat was purchased by plaintiff by his own income.

6] In the application Exh.27, defendant has raised three objections about maintainability of the suit. Said objections are; (i) valuation of suit, (ii) from the statement in the plaint, the suit is barred by law and (iii) non disclosure of cause of action. Learned advocate Shri. Shaikh for defendant submitted that, suit is valued by the plaintiff for Rs.8,00,000/-, however market value of the suit flat on the day of filing of suit was Rs.20,00,000/-. Plaintiff has filed present suit for declaration and possession of ownership and therefore, the suit is required to be valued on the basis of market value of Rs.20,00,000/-. Plaintiff has under valued the suit and therefore, the plaint required to be rejected. Learned advocate Shri. Kulkarni for plaintiff argued that, as per the extract of Index II register of the suit flat filed list Exh.3/1 market value of the suit flat is Rs.7,29,360/-. Plaintiff has valued the suit for Rs.8,00,000/- and therefore, suit is properly valued. Hence, plaint is not required to be rejected on this ground.

7] Upon perusal of document at Sr.no.1 in list 3, it appears that, market value of the suit flat was Rs.7,29,360/-. Admittedly, agreement of the suit flat showing the said market was executed in the year 2009. Even if it is presumed that, market value of the suit flat has been increased from 2009 to 2012, but defendant has not placed on record any material to show that, market value of the suit flat was Rs.20,00,000/- in the year 2012 when the suit was filed. Thus, there is no material to show that, the market value is Rs.20,00,000/- and suit is under valued by the plaintiff. It is well settled law that, contents of the plaint has to be considered for deciding the objection raised U/O 7 Rule 11 of C.P.C. Valuation clause in the plaint is indicating the market value of the suit flat is Rs.8,00,000/-. In

absence of any material to establish the market value of the suit flat Rs.20,00,000/-, it cannot be hold that, plaintiff has under valued the suit. Therefore, the objection regarding under valuation of the suit cannot be accepted.

8] Second objection raised by defendant is that, statements in the plaint are barred by law and therefore plaint deserves to be rejected U/O 7 Rule 11(d) of C.P.C. Learned advocate Shri. Shaikh for defendant argued that, plaintiff has admitted that, defendant is co- owner of the suit flat in para no.12 of the plaint. In view of this, plaintiff cannot ask for possession of suit flat from co-owner without seeking relief of partition. Therefore, suit is barred by provision of Order 2 Rule 2 of C.P.C. Relief prayed in clause(c) of the para no.17 of the plaint, cannot be granted in view of admitted fact that, defendant is co-owner. Plaintiff has sought mandatory injunction directing defendant to sale the suit flat and to accept amount of Rs.5,00,000/- out of said consideration as a one time settlement. This prayer cannot be granted as plaintiff cannot compel defendant to settle the matrimonial dispute for which divorce petition is pending in the Family Court, Pune. This prayer is against the provisions of law and hence, the plaint is liable to be rejected. Learned advocate Shri.Kulkarni for plaintiff argued that, reliefs claimed in the plaint are sought under the provisions of Specific Relief Act. None of the statement in plaint is barred by law. Hence, plaint cannot be rejected.

9] In para no.12 of the plaint, plaintiff has admitted that, defendant is co-owner of the suit flat as the registered agreement of suit flat is in the name of plaintiff and defendant. Even though plaintiff has contended that, the suit flat was purchased by his own income, but the relief sought against defendant to sale the suit flat. Plaintiff has sought to issue mandatory injunction compelling defendant to accept one time settlement and to accept Rs.5,00,000/- out of the sale consideration of the suit flat. In para no.12 of the plaint, plaintiff is contending that, he is ready

to pay Rs.3,00,000/- and in para no.(d) of prayer clause, it is contended that, defendant be directed to accept Rs.5,00,000/- as one time settlement. First of all there is inconsistency in the amount offered by plaintiff to the defendant for releasing her rights. Secondly, the plaintiff is seeking mandatory injunction against the co-owner to sale the suit flat and not asking the defendant to release her right and interest of ownership in the suit flat. It revealed from the contents of plaint that, matrimonial dispute in between plaintiff and defendant is going on since 2010 and divorce petition in between them is pending in the Family Court, Pune since 2011. By making prayer clause(d) to accept the amount as one time settlement, plaintiff is asking defendant to settle the matrimonial dispute. This prayer is made as a mandatory injunction under the provision of Specific Relief Act. Mandatory injunction can be issued only if there is a breach of obligation. In the present case, there is no any contractual obligation in between defendant and plaintiff and no any breach of such obligation by the defendant. Therefore, plaintiff cannot compel defendant to settle the dispute as one time settlement by accepting amount and selling the suit flat. In my view these statements are barred by the provisions of Section 23 of Contract Act, as said prayer is against the public policy and right to avail legal remedy available to the defendant. Plaintiff is accepting defendant as co-owner as the agreement is registered also in her name. Without seeking any relief regarding the said agreement, plaintiff is claiming himself as owner and sought declaration of his ownership. Plaintiff has not sought any relief of partition. Without seeking such relief, plaintiff cannot claim right of ownership. Therefore, said relief is also barred by proviso of Section 34 of Specific Relief Act. Hence, the objection raised by defendant U/O 7 Rule 11(d) of C.P.C. is sustainable. For this reasons, plaint is liable to be rejected. Hence, I answer point no.1 in negative and point no.2 in the affirmative.

As to Points No.3 & 4:

10] The next objection raised by defendant is that, plaint does not

discloses cause of action. Learned advocate for defendant submitted in written argument that, the plaint is not disclosing cause of action. Cause of action is a bundle of facts which taken with law applicable to them gives the plaintiff right to claim relief against the defendant. The plaint nowhere discloses that, which facts gives rise to the plaintiff to file the present suit which construed the cause of action. According to learned advocate, there is no disclosure of bundle of facts and no real cause of action. Learned advocate relied on various rulings. As against this learned advocate for plaintiff argued that, plaintiff has sufficiently averred facts construing the cause of action. In para no.14 of the plaint, plaintiff has shown the cause of action. Hence, according to learned advocate for plaintiff, plaint cannot be rejected for non disclosure of cause of action.

11] So far as submission relating to para no.14 of the plaint is concerned, said paragraph cannot be hold as disclosing cause of action to file the suit. Para 14 of the plaint disclosing only the starting point of limitation to file the suit. Admittedly, cause of action means bundle of facts construing the rights of plaintiff giving cause for filing suit claiming the reliefs in respect of property against the defendant. Plaintiff has sought declaration of ownership of suit flat. This relief is falling U/sec.34 of Specific Relief Act. Cause of action for seeking declaration of ownership can be said to be accrued only if the defendant is denying the character of plaintiff in respect of suit property. There are no averments in the plaint showing that, defendant has denied the ownership of plaintiff in respect of suit flat. Para no.9 of the plaint discloses that, there were serious disputes in between plaintiff and defendant in the year 2010. It further discloses that, defendant demanded an amount of Rs.50,00,000/- and to transfer the suit flat in her name. Even if this contention is presumed to be true as it is, this cannot be said as denial of ownership of the plaintiff over suit flat. Plaint also does not discloses that, clouds have been gathered over the title of the plaintiff over the suit flat for which plaintiff is required to seek relief of declaration of ownership. Defendant is admittedly co-owner

of the suit property. There are no averments that, defendant has no title in the suit property. Admittedly, defendant is possessor of the suit flat. Pleading in para no. 8 and 9 of the plaint regarding dispossession of plaintiff from the suit flat is vague pleading. No any date of dispossession has been pleaded. In such a situation the relief to hand over possession of suit flat sought in prayer clause (b) of the plaint appears to be without any pleading as to how plaintiff is entitled for possession of suit flat. No any facts are pleaded showing the right of plaintiff to recover possession of the suit flat from co-owner.

12] Prayer clause (d) of the plaint is of mandatory injunction directing defendant to sale the suit flat and to accept Rs.5,00,000/- as one time settlement and to credit the remaining amount of consideration to the plaintiff. This prayer is inconsistent with contention of para no.12 of the plaint. There is absolutely no pleading that, which dispute plaintiff wants to settle by way of one time settlement by offering defendant to accept Rs.5,00,000/-. No pleading is found in the plaint giving accrued right to the plaintiff entitling the plaintiff to seek relief of one time settlement. Pleading in the plaint is absolutely silent as to which dispute plaintiff wants to settle by way of one time settlement. It appears that, plaintiff wants to settle matrimonial dispute with the defendant. Admittedly, divorce petition is pending in between in the Family Court, Pune. Thus, plaintiff wants to settle said dispute by seeking relief before the Civil Court. No any fact is pleaded showing accrued right to plaintiff to settle the dispute by filing suit before the Civil Court. Secondly, relief in prayer clause(d) is appears to be inconsistent with prayer clause(c). If plaintiff is claiming his exclusive ownership over the suit flat, he has no need to sought direction against defendant for selling the suit flat and to accept the amount of Rs.5,00,000/- by way of one time settlement. This prayer seems to have been made only to pressurize the defendant to settle the dispute before Family Court.

13] Out of the rulings relied by defendant, the only ruling in **T.Arvindanam Vs. T.V.Satyapal & Another, AIR 1977 S.C.2421**, is relevant in the present case. In this ruling the Hon'ble Apex Court has held that,

“If on a meaningful-nor formal reading of the plaint, it is manifestly vexatious, and meritless, in the sense of non disclosing a clear right to sue, he(munsif) should exercise his power under order VII Rule 11 of C.P.C. taking care to see that, the ground mentioned therein fulfilled”.

14] If the plaint in present suit is minutely read, the plaint is appears to be drafted very cleverly. No right to sue for the reliefs claimed in plaint has been discloses. No cause of action in bundle of facts showing accrued right to seek the reliefs claimed in prayer clause (a) to (d) in para 17 of plaint has been disclosed. The suit appears to be filed for pressurizing defendant to settle the dispute before Family Court. Relief of mandatory injunction to accept the amount of Rs.5,00,000/- as one time settlements confirms that plaintiff has only intention behind filing this suit is to pressurize the defendant to settle the dispute. Otherwise there is no any right accrued to file present suit on mere unlawful demand allegedly pleaded in para no.9 of the plaint. For all these reasons, I hold that, the plaint is cleverly drafted creating illusory cause of action. The plaint is manifestly vexatious and meritless and no right was accrued to the plaintiff to sue for the reliefs claimed in the plaint. Therefore, I found substance in the objection raised by defendant that, plaint is not disclosing cause of action. Hence, I answer point no.3 in affirmative. For non disclosure of cause of action and the statements in the plaint barred by law as noted above, hence, the plaint is liable to be rejected by allowing application Exh.27. Hence, I pass following order.

Order

1] Application (Exh.27) is partly allowed.

- 2] Complaint is rejected U/O 7 Rule 11(a) and (d) of Code of Civil Procedure.
- 3] Parties to bear their own costs.

Sd/-x.x.

(N.G.Shukla)

Dated: 08.10.2015.

2nd Add. Judge, S. C. Court
& Jt. Civil Judge S. D. Pune.

I affirm that the contents of this PDF file Judgment are same word for word as per original Judgment.

Name of Steno : Mrs. S.K.Sayyed, Steno H.G.
Court Name : Shri. N.G.Shukla,
2nd Addl. Judge, Small Causes Court, Pune.
Date of Order : 08.10.2015
Order signed by presiding officer on : 12.10.2015
Order uploaded on : 13.10.2015