

**IN THE COURT OF THE PRL. CIVIL JUDGE AND
J.M.F.C., AT SIDDAPUR**

: PRESENT :

SRI. BHARATH CHANDRA K.S

B.A., LL.B.,

CIVIL JUDGE & JMFC COURT
SIDDAPUR

O.S.79/20221

DATED THIS THE 01st DAY OF OCTOBER 2024

PLAINTIFFS: Nagendra Ganapati Hegde
[By Sri VSH/SMN Advocate]

V/s.

DEFENDANT: Ganapati Subbayya Hegde

Applicant: Ishwar Rama Naik

IA No IV

Respondent: Nagendra Ganapati Hegde

[By Sri D-1 to 4 kGN, D-5 RGH /RPB, D-6 RSH
Advocate]

ORDERS ON IA.NO. IV

The applicants/ defendants have filed IA.No. IV under Order 7 Rule 11(d) of CPC, seeking to reject the plaint on the grounds urged in the annexed affidavit.

2. The said application is accompanied by an affidavit, which states that the plaintiff has filed the present suit challenging the compromise decree in O.S. 31/2020 before the Civil Judge at Siddapur. It is understood that the plaintiff's suit is not maintainable under the law and is therefore liable to be dismissed in limine, without consideration of the merits of the case. The plaint is liable to be rejected on this ground alone. The applicant asserts that a compromise decree of the Lok Adalat, or any compromise decree, cannot be challenged in any suit or appeal. No suit is maintainable to challenge a compromise decree, whether by the parties to the compromise or by any person claiming through them. The plaintiff is asserting his rights through his father, i.e., defendant No. 1. As a result, they cannot challenge the compromise decree to which Defendant No. 1 is a party and signatory. Based on the plaint's averments, it is evident that the suit is barred by the provisions of the Civil Procedure Code. The applicant, therefore, believes

that since the suit is ex-facie not maintainable, the plaint is liable to be rejected. Furthermore, the suit is explicitly barred by the provisions of the Civil Procedure Code. The remedy for any person aggrieved by a compromise lies elsewhere and certainly does not include a separate suit or appeal against the compromise decree. Therefore, this suit is not maintainable, and the applicant seeks the rejection of the plaint.

3. The plaintiff has filed objections stating that, at this stage, only the averments of the plaint are to be considered. Defendant No. 5 seeks to suppress an illegal decree. The so-called compromise decree in O.S. No. 31/2020 on the file of the Civil Judge at Siddapur is unregistered and unstamped; therefore, it cannot be enforced. In that suit, without bringing in the Coparceners and heirs of the plaintiff's family, the suit was filed, making it illegal and not maintainable. There has been fraud and cheating by the 5th defendant. Consequently, a full trial is necessary to uncover the fraud and illegality perpetrated by the 5th defendant. If this application is granted, it would result in injustice to the plaintiff. Hence, it is prayed that this application may be dismissed with costs.

4. Heard both sides and perused the material placed on record, along with the decisions relied upon by the plaintiff and defendants.

5. Upon hearing the arguments of both sides and perusing the materials placed on record, the following points would arise for the consideration of this court:

POINTS

1. Whether the Defendant No.5 has made out sufficient grounds to reject the plaint in accordance with Order VII Rule 11 (d) of CPC i.e to say that the suit appears from the statement in the plaint to be barred by any law?
2. What Order ?

6. The findings to the above points are as under:

Point No.1 : In the Negative

Point No.2 : As per the order

For the following :

REASONS

7. **Point No.1** : As the averments made in the affidavit annexed to the application and the averments of the objections to the application, are detailed at the

inception of this order, this court shall without repeating the same, delve into the dispute on hand.

8. The counsel for Defendant No. 5 argues that the plaintiff's suit is barred by Order XXIII Rule 3(a) of the CPC, making the plaint liable for rejection under Order VII Rule 11(d) of the CPC. The argument asserts that once a compromise has been entered into in accordance with Order XXIII Rule 3, and a compromise decree has been issued, no suit can be initiated to set aside that decree. The plaintiff can only seek to reopen the case in which the compromise was made by filing an application under Order XXIII Rule 3-A of the CPC. The counsel further contends that no suit, appeal, revision, or writ petition can be filed against a compromise petition. Additionally, the plaintiff seeks to establish rights over the suit schedule property through Defendant No. 1, his father, indicating that the plaintiff was adequately represented in the compromise petition, thereby rendering the compromise decree binding upon him. Consequently, the suit is deemed not maintainable, with suggestions that the plaintiff has colluded with Defendant No. 1 in filing this suit. The counsel also references Section 8 of the Hindu Succession Act, arguing that the plaintiff cannot claim rights to the suit schedule property while his father is still alive. Moreover, it is noted that the plaintiff has not produced the compromise decree before this court, thus seeking to reject

the plaint. The counsel cites three judicial decisions to support these arguments:

- A. Manoj Sharma and others v. Pankaj Sharma and others, Civil Revision Petition No. 164/2016, Hon'ble High Court of Rajasthan.
- B. Smt. Lakshamma and others v. T.H. Ramegowda and others, 2015 (5) KCCR 631, Hon'ble High Court of Karnataka.
- C. Trilokhnath Singh v. Anirudda Singh, AIR 2020 SC 2111, Hon'ble Supreme Court of India.

9. Conversely, the counsel for the plaintiff argues that, since the plaintiff was not a party to the compromise petition or the suit that resulted in the compromise decree, the provisions of Order XXIII Rule 3-A do not apply to him, thus maintaining that the suit is valid. The counsel emphasizes that the suit schedule property is ancestral, and the plaintiff is one of the coparceners. Despite being of age at the time of the compromise, the plaintiff was not included in the proceedings. Furthermore, the counsel asserts that the compromise decree should have been registered; since it is not, it is not binding on the plaintiff. The issues raised by Defendant No. 5 involve mixed questions of law and fact, which cannot be resolved at this preliminary stage. The counsel maintains that only the averments in the plaint should be considered when deciding this application, rather than the defense's claims.

The plaintiff's counsel references two additional decisions to bolster these arguments:

- A. Bhau Ram v. Janak Singh and others, 2013 (1) Civil LJ 344, Hon'ble Supreme Court of India.
- B. M.L. Vijaya v. T. Srinath and others, 2011 (3) KCCR 2269, Hon'ble High Court of Karnataka.

10. It is undisputed that the plaintiff was not a party to the compromise decree passed in O.S. No. 31/2020, and it is also admitted by both the parties that the suit schedule properties are ancestral properties. The counsel for Defendant No. 5 argues against the plaintiff's entitlement to the suit schedule property, citing the decision of the Hon'ble High Court of Rajasthan in Civil Revision Petition No. 164/2016 and the application of Section 8 of the Hindu Succession Act. The counsel specifically contends that the plaintiff seeks to establish rights over the suit schedule property through Defendant No. 1, his father, implying that the plaintiff was adequately represented in the compromise petition, thereby making the compromise decree binding on him. In the cited case, the Hon'ble High Court, relying on the Hon'ble Supreme Court's decision in Commissioner of Wealth Tax, Kanpur, and Others vs. Chander Sen and Others [(1986) 3 SCC 567], dismissed the respondent's suit under Order 7 Rule 11 of CPC.

11. It is pertinent to note that both the High Court and Supreme Court rulings pertained to properties left behind by the grandfather in his individual name, and the application of Section 8 of the Hindu Succession Act. According to settled legal principles, under Section 8 and Schedule-I of the Act, a grandson cannot inherit properties left behind by the grandfather because the grandson is not a Class I heir as listed in the Schedule. However, in the present case, both the plaintiff and the defendant admit that the suit schedule properties are ancestral properties. Given this, the application of Section 8 does not arise. Instead, the plaintiff seeks his rights as a coparcener under Section 6 of the Hindu Succession Act. The cases cited by Defendant No. 5 do not involve the determination of coparcenary property or coparcenary rights.

12. Under the Mitakshara Law each son upon his birth takes an interest equal that of his father in ancestral property, whether it be movable or immovable. It is very important to note that, the right which the son takes on his birth in the ancestral property is wholly independent of his father. He does not claim his right through the father. Thus, no actions of the father with respect to ancestral property affect the interest of the son in the property. In the present case, both parties admit that, the suit schedule properties were ancestral properties, thus the plaintiff had a right over the same since the time of his birth and he takes half share along with his father. Therefore, the argument of the counsel for defendant no. 5 that, the

plaintiff claims his right through his father does not sustain.

13. In the Lakshamma's case (Supra) and Trilokinath Singh case (Supra) relied upon by the counsel for Defendant No. 5, it was held that no appeal or suit can be filed to set aside a consent decree by a party to that consent decree. However, in the present case, it is undisputed that the plaintiff was not a party to the consent decree. In both of the cited cases, the plaintiffs were parties to the consent decrees. Therefore, the three decisions relied upon by Defendant No. 5 are not applicable to the facts and circumstances of this case.

14. It is important to highlight that the argument presented by the counsel for Defendant No. 5 goes to the core issue of the case, which is the determination of the plaintiff's entitlement to the suit schedule property. However, this court, when deciding an application for the rejection of the plaint, cannot delve into the merits or evidentiary matters of the case.

The **Hon'ble Supreme Court of India**, in **Kamala and others vs. K.T. Eshwara Sa and others (2008) 12 SCC 661**, clarified that only the averments in the plaint are relevant when invoking Clause (d) of Order VII Rule 11 of the CPC. At this stage, no additions or subtractions can be made to the plaint, and no evidence can be considered. The court must refrain from examining the merits of the matter or disputed questions of fact or law at this stage.

Additionally, the **Hon'ble Supreme Court** in **Eldeco Housing And Industries Limited vs. Ashok Vidyarthi, 2023 INSC 1043**, held that documents referred to by the respondent in support of a plea for rejection of the plaint cannot be considered at this stage unless they are part of the plaint itself. The Supreme Court reiterated that no evidence or merits of the controversy can be examined when deciding an application under Order VII Rule 11 of the CPC.

Further, in **Gurudev Singh vs. Hardev Singh, 2022 LiveLaw (SC) 963**, the **Hon'ble Supreme Court** emphasized that the argument that the plaintiff is not entitled to relief cannot be a ground for rejecting the plaint at the threshold under Order VII Rule 11. The trial court's decision to reject the application under this provision was upheld by both the High Court and the Supreme Court, reinforcing the principle that such determinations require a full trial.

15. In light of the above decisions, it is evident that at this stage, the court cannot determine the plaintiff's entitlement or non-entitlement to the relief sought in the plaint. No matter how strong the defendant's defense may appear, the court cannot engage in fact-finding or determine the parties' rights at this stage. The defendant must clearly establish that the suit is barred by law under Order VII Rule 11(d) of the CPC. This bar must be evident

from the plaint itself and cannot rely on speculative defenses or issues requiring a full trial for resolution.

16. The defense raised by the defendant regarding the application of Section 8 of the Hindu Succession Act, and the argument that the plaintiff is claiming rights through Defendant No. 1 and was adequately represented by him in the compromise decree, requires a thorough trial to reach a conclusion. Upon a careful perusal of the plaint, none of its contents appear to be barred by law.

17. Furthermore, the defendants' reliance on the compromise decree overlooks the fact that the plaintiff's claims are not entirely contingent upon challenging the decree itself. The plaintiff asserts rights that arise from his position as a coparcener in ancestral property, and these rights exist independently of the compromise decree. The claims regarding the ancestral nature of the property and the plaintiff's entitlement as a coparcener necessitate a deeper inquiry that cannot be conclusively addressed at this preliminary stage. Rejecting the plaint on the basis of Order VII Rule 11(d) would prematurely dismiss these legitimate claims, which require proper adjudication in a full trial.

18. This court is obligated to consider whether the plaintiff's legal interests were adequately protected and represented in the earlier compromise. Without a clear demonstration that the plaintiff's rights were conclusively resolved by the earlier decree, the Plaint cannot be rejected.

Thus, the defendants' application for rejection of the plaint does not satisfy the stringent criteria under Order VII Rule 11(d) of the CPC. Accordingly, this court answers **Point No. 1** in the **Negative**.

19. Point No 2 : In view of the finding on Point No.1, this court proceeds to pass the following:

ORDER

The application filed by Defendant No.5 under Order VII Rule 11(d) of CPC, is hereby dismissed.

For plaintiff evidence, call on 28-10-2024.

(Dictated to the Stenographer directly on the computer, computerized by him and order then, revised and corrected by me, print out taken by him and then pronounced in the open court on this the 01st day of October, 2024.)

(BHARATH CHANDRA K.S)
CIVIL JUDGE & JMFC
SIDDAPUR.

