


MHAH050011722020 	<b><u>Spl.C.S. No. 37/2020.</u></b> <b><u>Shri. Chakradhar Mahanubhav Ashram</u></b> <b><u>Vs.</u></b> <b><u>Sudeshbhai Baleraj Shastri Aradhya</u></b>
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**ORDER BELOW EXH.63**

The defendants have filed this application purportedly under Order VII Rule 11 (a) to (d) of the Code of Civil Procedure for rejection of plaint.

2. The defendants in support of their application have submitted that, the suit property was purchased by their religious teacher namely Guru Mukundraaj on 07.01.1970 by way of registered sale deed in his personal capacity. He was the religious teacher of Chakradhar Mahanubhav Sect. The plaintiffs have filed the present suit for declaration of nullity of the sale deed executed by defendant nos. 1 and 2 in favour of defendant no.3 in respect of the said suit property and the perpetual injunction. According to them, as the suit property was personally owned by Guru Mukundraaj, they had every right to inherit the same and execute the sale deed in favour of defendant no.3, after the death of Guru Mukundraaj. Though the plaintiff has claimed the suit property as belonging to the Mahanubhav Ashram, they have neither shown the suit property in the schedule of trust before the Charity Commissioner nor registered it as such while registering the trust. Even the change report with respect to the Mahanubhav Trust did not find mention of the suit property as the trust property. During pendency of the suit, the plaintiff approached the charity commissioner for change report in Inquiry Application No.928/2021

dated 21.06.2021 by way of which also the suit property is not shown as the trust property. Therefore, the plaintiff has approached the court with suppression of fact about the nature of the suit property which has caused mental harassment to the defendants which disentitle him to proceed with the suit and therefore, the plaint is liable to be rejected.

3. The plaintiff vide his say to the application has denied and disputed the contention of the defendants. According to him, the suit is filed challenging the execution of the sale deed and consequential declaration, which is within the jurisdiction of Civil Court. The defendants are trying to take advantage of subsequent change reports obtained after filing of the suit. Therefore, the application deserves rejection.

4. Considering rival contentions of Both the parties and documents produced in support thereof, following points arise for my determination to which I record my findings thereon for reasons to follow :-

Sr.No.	Points	Findings
1.	Whether the plaint of the suit is liable to be rejected under Order VII Rule 11 of Code of Civil Procedure, in the facts and circumstances of the case ?	In the negative.
2.	What order ?	As per final order.

### **REASONS**

5. Heard learned counsel for both the parties.

**As to point no.1 :-**

6. Order VII Rule 11 (a) to (d) of the Code of Civil Procedure stipulates the eventualities under which the Court may resort to exercise of the powers of rejection of plaint. These eventualities are want of cause of action, under valuation of the relief and its non correction in-spite of the directions of the Court, the insufficiently stamped plaint, and the specific bar of the law to the statement in the plaint.

7. It is also settled position of law that while determining the question of tenability of the plaint, the Court is required to take into consideration the contents of the plaint and not the defence raised by the defendants against the same. In other words, the maintainability of the plaint has to be decided only on the basis of averments of the plaint.

8. It is apparent from record that the defendants have prayed for rejection of plaint predominately on the ground that want of cause of action. According to them, the nature of the suit property as trust property was never raised by the plaintiff at any point of time. It was a property owned by original Guru Mukundraj and the defendant nos. 1 and 2 being his legal heirs had authority to execute the sale deed. The absence of noting of the said property as trust property by the plaintiff in the change report as well as the proceeding before the Charity Commissioner is indicative of the fact that, the plaintiff lacks cause of action. Therefore, the plaint is liable to be rejected.

9. A perusal of plaint suggest that, the plaintiff has challenged the sale deed bearing registration no.3527/2020 dated 03.11.2020 executed by the defendant nos. 1 and 2 in favour of defendant no. 3 in respect of the suit property. The plaintiff has claimed the suit property as the property of Mahanubhav Trust. According to the plaintiff, after demise of their Guru Mukundraj, the hermitage i.e. the Ashram is entitled to inherit the said property. The defendant nos. 1 and 2 have claimed heirship or succession to the Guru Mukundraj and mutated their names in the record of the suit property. By taking disadvantage of the said mutation entries, they have alienated the suit property in favour of defendant no.3.

10. A close scrutiny of the said pleading nowhere demonstrate that it lacks cause of action. In fact, the plaint is based on valid cause of action prefaced with cogent facts. Even the competency of the Civil Court to try and entertain the suit is also writ large on record. The plaint neither lacks in jurisdiction nor it is based on imaginary facts. Accordingly, it does not deserve rejection. Therefore, I answer point no.1 in negative and proceed to pass following order :

**ORDER**

1. Application Exh.63 stands rejected.
2. Cost in cause.

Date: 22/08/2024

( R. B. Giri )  
Civil Judge Sr. Division,  
Shrirampur.

