

Order below Exh.19 in R.C.S.No.103/2012.

The defendants have filed this application under Order VII R.11 (a) and (d) of the Code of Civil Procedure. According to them, mother of the plaintiff instituted one suit and Darkhast bearing number Regular Darkhast No.36/1996. It is pending. The suit property and property of the Darkhast is the same. In the Darkhast the defendants raised objection under Section 47 of the CPC and claims the declaration and ownership. The application under Section 47 is to be tried as per procedure of the suit. They have claimed that the plaintiff has no any cause of action to institute the present suit. Therefore they prayed for rejecting the plaint.

2. The plaintiff filed the say underneath of the application and opposed the application. The suit is not barred by the provision of Order VII R.11 (a) and (d) of the CPC. The defendants have filed this application to mislead the Court and prolong the matter. The application is false one. Therefore the plaintiff prayed for rejecting the application.

3. Heard the learned counsel for the parties. Learned counsel for the defendants relied on Soumil Sil V/s. Subhas Chandra Sil, reported in 2015 (1) ALL MR 415 (SC). In this case there was matrimonial dispute and the said matrimonial dispute was compromise in the High Court. In view of the said compromise plaintiff no.1 being the mother handed over the possession of suit premises to respondent and filed application to delete her name from the title of the suit. Therefore, it is held that after deleting her name and handing over the possession, foundation of the suit is not subsisting. The plaint discloses no cause of action. Therefore rejecting of the plaint is held

proper.

4. In the present matter before me the plaintiff has instituted the suit for perpetual injunction. In Para no.7 of the plaint, it is stated that prior to 8 days back the defendants attempted to encroach the suit property and wanted to construct. Therefore, the plaintiff instituted this suit. The order VII R.11(a) of the CPC says that :- the suit can be dismissed when it does not disclose a cause of action. In the present matter the plaintiff has specifically mentioned that he has cause of action prior to 8 days of the institution of the suit. It is also alleges that the defendants made attempt to encroach the suit property. The previous suit was instituted by the mother of the plaintiff. The defendants raised the objection in the Darkhast. The defendants have not shown that how the cause of action of their application under Section 47 is barred the present cause of action of the plaintiff. Likewise, the defendants have not shown that the suit is barred by any law. Hence the application is not satisfying the essential ingredients of Order VII R.11 of the CPC. Therefore, the provision does not applicable. Hence the application is liable to be rejected and I pass following order.

ORDER

1. The application is rejected.
2. No order as to cost.

Date :-01/08/2015.

(P.V.Bulbule)
Civil Judge Senior Division,
Newasa.