

MHAU050025472020



Suresh and other V/s. Ramesh and other

ORDER BELOW EXH.26**(Passed on 03-01-2023)**

This is an application filed by the defendant No.1 to reject the plaint under Order VII Rule 11 (b) of the Civil Procedure Code.

02. It is the contention of the defendant No.1 that, present suit has been filed by the plaintiffs for relief of partition and separate possession as well as to the relief that, sale deed with respect to the suit property is not binding on them. However, relief claimed in the suit by the plaintiffs is under valued. The plaintiffs ought to have paid Court fees on the sale consideration amount of Rs.1,65,000/-. However, they have paid Court fees only Rs.200/-. Therefore, by the reason of aforesaid, the defendant No.1 claimed to reject the plaint.

03. Application is opposed by the plaintiffs. It is their contention that, although suit is filed for partition and separate possession of the suit property, however they have not sought relief to cancel the sale deed with respect to the suit property and

they have only sought the relief of declaration with that respect. They have properly valued the suit and paid requisite Court fees, therefore application of defendant is not maintainable. Lastly, prayed to reject the application.

04. Heard Ld. Counsels of the both sides.

05. Ld. Counsel for the defendant No.1 relied on the decision of Hon'ble Punjab - Haryana High Court of the matter of *Som Nath and Ors. V/s. Karam Singh in C.R.No.2012 of 2018* and the decision of Hon'ble Supreme Court of India of the matter of *A.K.A.CT.V.CT. Meenakshisundaram Chettiar V/s. A.K.A.CT.V.CT. Venkatachalam Chettiar reported in 1979 SCR (3) 385*.

06. I have gone through the observation of the above cited case laws as well as the ground raised by the defendant to reject the plaint. Further, I have considered the pleadings of the plaintiffs of the suit. It can be seen that, present suit has been filed by the plaintiffs for relief of partition and separate possession as well as to the relief that, sale deed with respect to the suit property is not binding on them. Further, I have gone through the copy of sale deed produced with Exh.4. Upon perusal the copy of sale deed, it would demonstrate that, none of the plaintiffs are parties to the said sale deed. If main relief with respect to that sale deed is considered, it can be easily seen that,

plaintiffs have properly valued the relief claimed and paid requisite Court fees on it. If all above facts and circumstances taken into account alongwith the facts and circumstances of the cited matters, it can be seen that, points for consideration in the cited matters are totally different with the points raised by the defendant in the application. Therefore, I am of the humble opinion that, the above cited matters would not come to the rescue of the defendant's ground raised in the application.

07. No legal force find in the ground raised in the application, if the reliefs claimed in present suit are considered. Lastly, I come to the conclusion that, present application deserves to be rejected. Therefore, I pass following order.

ORDER

Application stands rejected.

Place : Vaijapur.
Date : 03-01-2023.

(R. M. Karade)
Jt. Civil Judge Senior Division
Vaijapur

CERTIFICATE

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the Stenographer : Shri. G. M. Zade.
(Stenographer Grade-II)
Court : Shri. R. M. Karade.
Jt. Civil Judge, Sr. Dn.,
Vaijapur.
Date : 03-01-2023
Order signed by the
presiding officer on : 03-01-2023
Order uploaded on : 03-01-2023