

MHAU060005982006



IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION, KANNAD, DIST.
AURANGABAD

(Presided over by P. M. Kolse)

CNR NO.MHAU06000598-2006**R.C.S No.77/2006****Bijlabai Bhaskar Aher & Ors.****...Plaintiffs****Versus****Devidas Namdeo Zimman & Ors.****...Defendants****ORDER BELOW EXH.153**(Delivered on 13th October 2022)

1. The defendant no.2 and 10 to 14 (for short “defendants”) have moved this application under order 7 rule 11 (a) and (c) of Code of Civil Procedure (for short 'C.P.C.') for rejection of plaint.

2. The defendants contended that, the suit is old one and does not disclose the cause of action. The suit is not filed with good motive. The pleading of the suit is ambiguous. The suit is filed to protect the interest of the defendant no.3 than the plaintiff. The plaintiffs have not affixed sufficient court fee stamp to the suit. Hence prayed to reject the suit with heavy costs. The learned advocate for the defendants relied on the following citations in support of the application.

1. *Sardar Khan Khokhar Vs. Devji Patel and others. A.I.R. 2012 Rajashtan 22.*
2. *Ponnalal Lakshmaiah Vs. Kommuri Pratap Reddy and others.*

A.I.R. 2012 Supreme Court 38.

3. Bhau Ram Vs. Janak Singh and others. A.I.R. 2012 Supreme Court 3023.

4. Tarun Malkapurkar Vs. Jitendra Agrawal and others. A.I.R. 2012 Madhaya Pradesh 118.

I have minutely gone through observations made in the above citations.

3. The plaintiffs have filed their say on the back side of the application and strongly opposed the application. They submitted that the application is false, frivolous and not tenable in the eyes of law. The application is nothing but the device used only to prolong the matter as the defendants are enjoying the properties and deliberately want to keep the matter lingering. The defendant no.13 who has moved this application, has not perused the plaint and the record of the present proceedings and has filed this false application. In the para no.6 of the plaint the plaintiffs have given the caused of action which the defendants have deliberately overlooked. The plaintiffs have amended the plaint and added the left out properties of the family in their claim and accordingly have also moved the application at Exh.144 for consequential amendment in the valuation of suit. Hence prayed to reject the application with Costs of Rs.5000/-

4. Perused the application, say and plaint. Heard learned advocate for plaintiffs. The defendant no.2 and 10 to 14 and their advocate are absent since long for the argument. The application is pending since 2014 i.e. almost more than eight years. Therefore, considering the circumstances I have taken the application for order on merit without argument of the defendants. Following points arose for

determination which I produce along with my findings.

Sr. No.	Points	Findings
1	Whether relief claimed is insufficiently stamped ?	In the negative
	Whether plaintiffs have not mentioned any cause of action to the suit ?	In the Negative
2	What Order ?	As per final order

REASONS

As to Point No.1 and 2 :-

5. It is settled law that, while deciding the application under order 7 rule 11 of C.P.C. the Court has to considered the plaint and not the written statement. Therefore, there is no dispute about the ratio laid down in the Bhau Ram (cited supra). After perusal of pleadings of plaintiffs and considering the submissions of learned advocate for the plaintiffs, it appears that the plaintiffs have filed suit for partition, declaration and permanent injunction. Initially suit was filed by plaintiff no.1 only, but thereafter as per order below Exh.12 dated 16.03.2012 the defendant no.4 Kesarbai Jadhav was transposed as plaintiff no.2 and she claimed her 1/6th share in the suit property as equal to plaintiff no.1.

6. As per order below Exh.144 the plaintiff has amended the plaint and added some new properties in the suit. As per said amendment the plaintiffs have valued the suit of Rs. 1,82,578/- and paid court fee stamp of Rs.8230/-. As discussed in the order passed below Exh.171 the plaintiff has valued the suit properly. Therefore, the Court fees affixed by the plaintiffs is also proper. Therefore, the observations made in the Tarun Malkapurkar (cited supra) is not applicable to the present case. The defendants merely filed this application without giving any proper

description that how the court fee is not sufficient. Therefore, I do not find any substance in the objection about the Court fees paid by the plaintiffs.

7. Moving ahead, the defendants contended that there is no cause of action to the suit. However, if we perused the plaint, it reveals that in para no.6 of the plaint the plaintiffs have mentioned that the on 4.06.2006 the plaintiff no.1 has sought partition of her share in the suit property to the defendants, but they refused the same. Therefore, the cause of action arose on 4.06.2006. Thus, it shows that the plaintiffs have mentioned the specific cause of action to the suit. Therefore, observations made in the Sardar Khan Khokhar and Ponnalal Lakshmaiah (cited supra) are not applicable to be present case. Thus, I do not find any substance in the objection raised about the cause of action.

8. Having gone through the above circumstances, I am of the view that plaintiff has valued the suit properly and affixed the court fee accordingly. Therefore, I answer point no.1 and 2 in the negative and in answer to point no.2 I pass following order:-

ORDER

1. The application Exh.153 is rejected.
 2. No order as to Costs.
- (Pronounce in open Court)

Date: 13.10.2022

(P. M. Kolse)
Civil Judge, J.D, Kannad

C E R T I F I C A T E

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 : Y. S. Mali

Court : P.M.Kolse.
C.J.J.D. & J.M.F.C, Kannad.

Date : 13/10/2022

Order signed by the
presiding officer on : 13/10/2022

Order uploaded on : 14/10/2022