

MHAU090014232012



RCS No. 34 /2012

Raju Vs. Machindra

Order below Exh. 67

Defendant No.5 filed this application under Order VII Rule 11 of the Civil Procedure Code. Defendant stated that, the plaintiffs have challenged sale deed dtd.08-05-2002 of Rs.35,500/-, sale deed dtd.19-08-2003 of Rs.39,000/- and sale deed dtd.03-06-2005 of Rs.50,000/-. The plaintiffs have not properly valued the suit and have not affixed sufficient Court Fees. The plaintiffs have not filed suit within limitation. It is prayed to reject the plaint.

2] The plaintiffs filed say and denied the contents in the application. The plaintiffs stated that they filed suit for partition and possession of the suit property, declaration that sale deeds are not binding on their shares. The plaintiffs have properly valued the suit and affixed sufficient court fees. The suit is within limitation. The application is filed to prolong the matter. It is prayed to reject the application.

3] Perused the application, say and record. Heard both sides.

4] The record shows that the plaintiff has sought partition and possession of the suit property, declaration that sale deeds are not binding on plaintiffs and injunction. It is settled law that while considering application under Order VI Rule 17 of the Civil Procedure Code, it is necessary to consider averments in the plaint. The plaintiffs stated in plaint that defendant No.1 executed sale deed on 08-05-2002 in

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favour of defendant No.4. Defendant No.4 executed sale deed dtd. 19-08-2003 in favour of defendant No.5. Defendant No.1 executed sale deed dtd.03-06-2005.

5] In case of *Suhrid Singh @ Sardool Singh Vs. Randhir Singh*, AIR 2010 SC 2807. The Hon'ble Supreme Court held that, “ *7. in this case, there is no prayer for cancellation of the sale deed. The prayer is for declaration that te deeds do not bind the coparcenery and for joint possession. The plaintiff in the suit was not the executent of the sale deeds. Therefore, the Court Fees was computable under section 7(iv)(c) of the Act.*”

6] In case of *Samdhan Dashrath Salunke Vs. Kamdhenu Co-Operative Housing Society*, Civil Revision Application No.2472 of 2020 dtd.04-03-2021 the Hon'ble Bombay High Court held that “ *The contention that since the sale deeds are not challenged and only declaration is sought to the extent of suit transaction not binding on the share of petitioner , the order impugned is not sustainable. The petitioner has right to pointed out paragraph 7 of the Appex Court Judgment in the matter of Surhid Singh Vs. Randhir Singh.* ”

7] In the present suit the plaintiffs are not parties in the sale deeds. The plaintiffs sought declaration that the sale deeds are not binding on their shares. In view of above judgments the plaintiffs have properly valued the suit and affixed sufficient court fees.

8] It is submission of defendant that the suit is not within limitation. The plaintiffs have stated in plaint that on 01-01-2012 defendants denied to give their shares so cause of action arose. Considering contentions the suit is within limitation. Therefore, at this

stage submission of defendant can not be accepted.

9] Considering above discussion, the application liable to be rejected. Hence, order.

Order

The application at Exh. 67 is rejected.

Date:-19-10-2022

(S. N. Bhavsar)
Civil Judge J.D. Paithan

Certificate

I affirm that the contents of this PDF file judgment/order are same, word to word, as per the original judgment/order.

Name of the Stenographer	:	Rakesh Rajmadan Pedapalli
Name of the court	:	C.J.J.D. Paithan
Date of judgment/order	:	19/10/2022
Judgment/order signed by the Presiding Officer on	:	19/10/2022
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