

Order below Exhibit No.68 in Spl.C.S.No.56 of 2012

(Girjabai Vs. Arjun and others)

01. Defendant No.3 has filed petition under Order VII, Rule 11 r/w section 151 of Civil Procedure Code for rejection of plaint. It is contended by the defendant No.3 that, specifically no any agreement of sale of suit property was executed in favour of plaintiff Nos.2 to 5. It is further contended that, no any cause of action arose. Cause of action shown in the plaint is false and fictitious. The document of agreement to sale is unregistered. As well as, the suit is also hit by law of limitation and mis-joinder and non-joinder of necessary parties. Defendant No.3 is bonafide purchaser, owner and possessor of suit property. Defendant No.3 has lastly requested to reject the plaint under Order VII, Rule 11 of C.P.C.

02. Plaintiffs have filed their say vide Exh.No.72 and contended that, defendant has no locus-standi at all to say that, there was no agreement to sale of suit property between plaintiff and defendant Nos.1 and 2. It is denied that, suit is hit by law of limitation and mis-joinder and non-joinder of parties. It is also denied by the

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plaintiffs that, no cause of action arose for filing of suit. It is submitted that, during pendency of suit, defendant No.3 has purchased suit property from the defendant Nos.1 and 2. Lastly, it is submitted by the plaintiffs that, matter has to be decided on merits. If matter is not decided on merits, then injustice may be caused to the parties. Application is not tenable in the four corners of Order VII, Rule 11 of C.P.C.

03. It appears that, application is supported by affidavit vide Exh.No.69. I have perused application and supporting affidavit, as well as say vide Exh.No.72 of plaintiffs. Heard both parties learned counsels.

04. Taking into consideration rival pleadings of both the parties, I framed following preliminary issues, to which, I have recorded my findings with the reasons given below :

PRELIMINARY ISSUES

FINDINGS

1) Is defendant No.3 proved that, plaintiffs have not disclosed cause of action ?

.... **In negative.**

2) What order ?

As per final order,
application stands rejected.

REASONS

As to preliminary issue Nos.1 and 2 :-

04. Plaintiffs and defendant No.3 have placed joint pursis vide Exh.No.92 that, they do not want to lead evidence on the preliminary issues.

05. I have gone through the provision i.e. Order VII, Rule 11 of C.P.C., particularly clause (a), which speaks that, where it does not disclose a cause of action and clause (d) speaks that, where the suit appears from the statement in the plaint to be barred by any law on which, defendant No.3 has filed instant application. After going through the plaint, it is found that, cause of action has been disclosed by the plaintiffs. As well as, after going through the plaint, I do not find anywhere that, the plaint is barred by any law. Therefore, in view of clause (a) and (d) of Order VII, Rule 11 and discussion made above, I answer preliminary issue No.1 in the negative and in answer to issue No.2, I pass following order.

ORDER

- 01) Application is rejected.
- 02) Costs in the main cause.

Sd/- 10/03/2017

Date :- 10/03/2017

(Satyasheela T. Katare)
Civil Judge (S.D.),Jalna.

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C E R T I F I C A T E

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

Name of the steno	:	P.S.Tayade,
Name of the Court	:	Civil Judge (SD Jalna
Date of PDF	:	10-03-2017.

Sd/-
Signature of stenographer