

MHKO070006312017



ORDER PASSED BELOW EXH. 50

1] Defendant No. 3 has taken out instant application under Order 7 Rule 11 of Code of Civil Procedure for rejection on plaint. According to them, the some of suit properties mentioned in detail in para No. 1(A) and 1(c) are situated at village Maishal, Tal. Miraj, Dist. Sangli. Only one property i.e. 1(B), i.e. Bungalow in CTS No. 2371 is situated within jurisdiction of this court. The said property was self-acquired property of defendant No. 1. It was constructed by obtaining loan, and taking deposits from defendant No. 3's parents and from breaking fixed deposits of their childhood. The said property is already sold by them to Mahesh Dubal, Prior to receiving summons of this suit.

2] As suit property 1(B) is not owned by defendant No.3 as well no other suit property is situated within jurisdiction of this court plaint be either rejected or returned to the court competent to try and entertain the present suit.

3] Plaintiff by way of detail reply vide Exh. 53, opposed the application. He admits that, though other properties are situated outside territorial jurisdiction of this court, the suit property 1(B), CTS No. 2371, is situated within jurisdiction of this court. Whether it is ancestral or self acquired of defendant No.1 is matter of trial. Merely it is sold by defendant that does not take away jurisdiction of court, to try the suit. According to them, if one or more than properties in disputes are situated within territorial jurisdiction of this court, the suit can be filed before this court as per Section 17 and 18 of C.P.C. Thus, it is well maintainable before this court hence, defendants application is not at all maintainable and be rejected accordingly.

4] Heard both sides. Gone through record and proceedings. Following point arose for my determination to which I have recorded my findings thereon along with detail reasons to follow.

Sr.No	Points	Findings
1.	Whether plaint is liable to be returned under Order 7 Rule 10 of C.P.C. ?	... In the Negative
2.	Whether plaint is liable to be rejected as per Order 7 Rule 11 of C.P.C. ?	... In the Negative
3.	What order?	...As per final order.

REASONS

AS TO POINT NOS. 1 TO 3

5] The Section 9 of the Code of Civil Procedure, provides jurisdiction to this Civil Court to try all civil suits unless barred. As per Section 21 objection to jurisdiction has to be taken by defendant before court of first instance at the earliest possible opportunity before settlement of issues and unless there is consequent failure of justice. Section 15 to 20 deals with territorial jurisdiction or place of suing.

6] In present case suit is for partition and separate possession of ancestral properties as well declaration and perpetual injunction. Defendant has taken out this application for two alternate reliefs i.e. return or rejection of plaint. As per Order 7 Rule 10, plaint of suit can be returned at any stage for presenting it to the court in which suit should have been instituted.

7] As far as rejection of plaint is concern, there are six grounds i.e. (a) to (f) provided by Rule 11 of Order 7. The defendant have not mentioned specific sub clause in their application. However on the basis of their contention, it seems that, they are seeking rejection on the ground provided in sub-clause (d) i.e. the suit barred by law. According to them, instant suit is not filed as per provisions of Section 15 to 20 of C.P.C. Thus, as all the suit properties are

immovable properties and are situated outside territorial jurisdiction of this court, this court's jurisdiction is barred by law.

8] Needless to mention that, instant application for rejection of plaint has to be decided by considering mere averments in plaint as whole and nothing more than that. This court can not reject plaint in parts (i.e. for some of reliefs sought therein). Moreover the court can not take into consideration defence of defendant while deciding present application. In above legal position, now let us see factual aspects of case in hand;

9] According to plaintiff he is having his 1/6th share in entire suit property. The suit property be partitioned and his shares separate possession be handed over to him. According to him, the sale deed of suit property dtd. 18/6/2016 bearing NO. 2/2481/016 is illegal and not binding on plaintiffs part hence it be declared null and void. Lastly he prayed perpetual injunction against defendant No.3 to 6 from obstructing his possession, without following due process of law.

10] In the plaint para No.1(A), the immovable properties are mentioned which are situated at Maishal village, Tal. Miraj, Dist. Sangli. The property in para 1(B) is bungalow named as 'Narayani Bungalow' bearing CTS No., 2371 admeasuring 925 sq.ft., situated Galli No. 1, Padmavati Colony, Jaysingpur, Tal. Shirol i.e. within

territorial jurisdiction of this court.

11] The Section 15 of Code of Civil Procedure provides that, every suit shall be instituted in the court of the lowest grade competent to try it. As per Section 16, suits for recovery of immovable property without rent or profits, partition, for foreclosure, sale or redemption etc. as well for wrong to immovable property are to be instituted where such subject matter is situated. But that is in respect where only single immovable property is in dispute.

12] The Section 17 deals with the situation where immovable properties are two or more than that and are situated within territorial jurisdiction of different courts. As per said provision, where the suit is to obtain relief respecting or compensation for wrong to immovable properties situated within jurisdiction of different courts, the suit may be instituted in any court within the local limits of whose jurisdiction any portion of the property is situated.

13] In my opinion, in view of above proposition of law, present suit is well maintainable before this court as suit property 1(B) is situated within territorial jurisdiction of this court. So the plaint can not be barred by any provision of Code of Civil Procedure or other law and can not be rejected as well no question of returning

same arose for filing elsewhere as plaintiff has chosen to file it before this court as per his convenience available or provided by Section 17 of C.P.C.

14] Hence, for reason recorded above, I have answer point Nos. 1 and 2 in negative and in order to answer point No.3, proceed to pass following order.

ORDER

Application Exh. 50 stands rejected with costs.

Date : 21/10/2022.

(B.A. Gaikwad)
Civil Judge Senior Division,
Jaysingpur.