

MHKO070014132016



ORDER BELOW EXH.74 IN SPECIAL CIVIL SUIT NO.38/2016.

Sou.Bharati Dattatray Patil etc.

V/s.

Shri.Dattatray Sadashiv Patil etc.

Defendant No.1 has moved the present application for rejection of plaint by taking recourse to Order 7 Rule 11 sub-clause (d) of the Code of Civil Procedure, 1908 contending therein that plaintiffs have filed the present suit in respect of partition, claiming that suit properties are joint properties. According to present defendant, suit properties are self acquired properties of the defendants, in which plaintiffs are having no right to claim the relief as sought. According to defendant, as suit properties are self acquired properties and so plaintiffs are not entitled for any relief. Consequently, defendant has requested for rejection of plaint vide Order 7 Rule 11 sub-clause (d) of the Code of Civil Procedure, 1908.

2. Plaintiffs have strongly opposed the present application vide say below Exh.77 and according to them, false application is filed by defendant and they are having right in the suit properties, not only being heirs but also as a co-sharer and so present application is liable to be rejected.

3. From rival contentions of the parties, following points arise for my determination on which, I have recorded my findings thereon with reasons to follow.

Sr. No.	Points	Findings
1.	Whether plaint is liable to be rejected by taking recourse to Order 7 Rule 11 sub-clause (d) of the Code of Civil Procedure, 1908 ?	...In the negative.
2.	What order ?	...As per final order.

4. On perusal of record it appears that, present application is filed on 04/02/2023 and say is filed on 12/04/2023 and since then application is for argument. As the application is pending since long and so taken for order.

REASONS

As to point No.1 & 2 :-

5. It is settled principle of law that, the plaint can be rejected only if it appears from the statement in the plaint to be barred by any law. It is only the fact pleaded in the plaint, which have to be taken into account. Whatever may be the defence of the defendant, the Court cannot look into the defence stated by the defendants in their written statement or in the application.

Here, according to plaintiffs, suit properties are joint family properties and they are also having right in it. Whereas, as per defendant, suit properties are self acquired properties and so present suit is not tenable. Nature of the properties can only be decided in due course of proceeding, after adducing evidence. It appears that, it is the defence of defendant that suit properties are self acquired properties but, that cannot be looked into as the scope of Order 7 Rule 11 of the Code of Civil Procedure, 1908 is

limited one. Suffice to say that, when the defendant questioned the nature of the properties being self acquired then on that count only plaintiff cannot be rejected because the defence of defendant can only be decided in due course of proceeding. Consequently, I answer point No.1 in the negative and in response to point No.2 pass the following order.

ORDER

1. Application is hereby rejected.
2. Costs in cause.

Jaysingpur.
Date : 01/10/2024.

(Y. H. S. Deshmukh)
Civil Judge Senior Division,
Jaysingpur, Dist.Kolhapur.