



**ORDER BELOW EXH. NO.29 IN R.C.S. NO.
143/2018**

Housabai Mahipati Chougale Vs. Ganpati Dinkar Wadkar

By way of this application, defendants seek to reject the plaint under Order VII, rule 11(d) of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'the C.P.C.'*). It is the contention of the defendants that, plaintiff has sought various reliefs of partition and separate possession of the shares and perpetual injunction. However, the suit properties were subjected to partition in the relevant proceedings conducted under the provisions of the *Maharashtra Tenancy and Agricultural Lands Act, 1948* (*hereinafter referred to as 'M.T. & A.L.T, 1948'*). Orders have been passed by the Hon'ble Maharashtra Revenue Tribunal. Hence, the present suit is not maintainable as the jurisdiction of the Civil Court is barred by the provisions of M.T.A.L. Act, 1948 as the compromise have taken place and accepted by the Hon'ble Tribunal on 25/08/2000. Hence, the present plaint is liable to be rejected.

02. Plaintiff has resisted this application by filing say below Exh. No. 35 wherein he has denied the contents of the application and additionally stated that, that the present application is filed merely to prolong the matter. Defendants have already taken the necessary contention as stated in the present application in their written statement. Accordingly, necessary issues have been framed below Exh. No. 5 at Exh. No. 28. The present suit is not barred by

the provisions of O. VII, r. 11(d) O.XXIII, of the C.P.C. Hence, the present application be rejected.

03. Perused the application and the say. The learned advocate of the plaintiff has reiterated the contents of the application in his submissions and has relied on the rulings. In view of the rival contention of both the parties, following points arise for my determination for which findings are recorded as per the reasons given below.

Sr. No.	Points	Findings
1.	Whether the plaint is liable to be rejected on the ground of the provisions of M.T & A.L.T, 1948?	No.
2.	What order ?	Application is rejected.

REASONS

Reasons as to Point No. 1 & 2:-

04. The main ground on which the defendants are seeking to reject the plaint is that suit is barred by the provisions of law particularly, the provisions of M.T.A.L. Act and O.XXIII r. (3) of C.P.C. Defendants have raised similar contentions in the written statement below Exh. No. 27. But, it is the settled position of law that, for the purpose of deciding application below O.VII, r.11 of the C.P.C., the averments of the plaint are to be looked into and the pleadings in the written statement cannot be resorted or looked into. Hence, if the pleadings of the plaintiff is perused, then, it appears

that, she has taken the stand that, suit properties belong to propositus Dattu Patil. Her wife Manjabai is dead and plaintiff Navsabai is daughter of Dattu & Manjabai. Navsabai is also dead. Defendant No. 5 and 1, 6 and 7 are children of Navsabai and defendant No. 3, 2 and 4 are grand-children of deceased Navsabai. Thus, plaintiff asserts her rights and interests in the suit properties on the ground that, she is also one of the successors of Dattu, as daughter of the Dattu. But the husband of deceased Navsabai, has inserted only their names in the Village Form No. 7 and 12 of the suit properties. Thus, she claims half share in the suit properties by way of partition and separate possession of the shares and also claims the relief of perpetual injunction so as to restrain defendants from alienating the suit properties or creating any third party interest in the suit properties. Thus, it appears from the averments of the plaint that, the necessary averment about the relief of partition and perpetual injunction are present.

05. From the above pleadings, it appears that plaintiff has presented genealogy below paragraph No. 2 of the family and it appears that, she is one of the successors of Dattu along with the deceased Navsabai. Thus, the grievance of the plaintiff can be reflected from the averments i.e. her rights and interest in the suit is being affected as husband and successors of her sister, Navsabai is trying to deprive her, by creating revenue records only in their names. Hence, she claims the relief against the defendants who are successors of Navsabai. Plaintiff has also taken the averments about the proceedings u/s. 85 of the Maharashtra Land Revenue Act, 1966

before Tahsildar. However, she has taken contention that the compromise u/s. 85 of the Maharashtra Land Revenue Act, 1966 have taken place between defendant No. 1 to 7 and she was not party to it. Hence, same compromise terms would not be binding on her. Thus, it appears that, there exists cause of action in averments of plaintiff. The reliefs are partition and separate possession of shares. The contention raised by defendants is that of prior partition. So, the present suit did not appear to be barred by law. There is no contention about the tenancy in the present suit. Hence, there is no clarity as to why the jurisdiction of the civil Court would be barred. Even if, contention taken the by the defendants with regard to the proceedings of the M.T.A.L. Act is sought to be adjudicated by the defendants, then it can be done so at length during trial as the same would require the scrutiny of the necessary documents as well as evidence of both the parties. This cannot be done at this stage. It is pertinent to note that, the necessary issues about the maintainability of the suit has been framed at Sr. No. 5 below Exh. No. 28. Hence, the adjudication about the aspect of bar to the present suit under the M.T.A.L. Act and that of other provisions of the C.P.C. can be done under issue No. 5. Rather, the present suit is now scheduled for the evidence of the plaintiff. Hence, trial is about to commence. Hence, both the parties can lead in support of their respective case during trial on appropriate issues. Accordingly, point No. 1 is answered in the negative and in answer to point No. 2, following order is passed.

ORDER

1. Application is rejected.

2. There are no special circumstances to award costs of this application hence, costs in cause.

Date : 04/05/2022

Place : Kagal.

(Katkar Vijaya N.S.)

Jt. Civil Judge, Junior Division, Kagal.