

R. C. S. No. 24/2012.

Maruti & Ors. Vs. Rekha (D.) L.R's & Ors.

MHKO150000772009.

ORDER BELOW EXH- 175.

Defendant no.1/A to 1/C, 2 to 5 & 7 have filed this application for rejection of plaint U/order 7 rule 11 of C. P Code.

2. It is contention of defendants that, plaintiffs have filed this suit for claiming their preferential right to purchase suit property U/sec. 22 (1) of Hindu Succession Act. Plaintiffs specifically contended that, Block No.1580 had been originally owned by Daddikar and allotted to their father Late. Bapu Khandekar as a tenancy land. Late. Bapu had three sons namely Maruti, Jotiba & Pandurang. However, as per admitted by plaintiffs, Pandurang had been died in 1980 living behind defendant no.3 to 6. Considering relation of plaintiffs with defendants, their preferential right has been considerable against their brother Pandurang only. They could not claimed preferential right against these defendants. The claim of plaintiffs is barred by law and not tenable even after amendment of plaint. Therefore, prayed to reject the plaint.

3. Plaintiffs have filed their say at Exh.165 and strongly opposed the application. They contended that, defendants have filed this application after suit has been posted for their evidence. Till 2009 defendants actively participate in the proceeding and therefore present application is not tenable at this stage. They further contended that, though their claim for preferential right has not been valid under legal provisions, however, they have claimed relief of perpetual injunction against defendants. Their relief for perpetual injunction not affected by legal provisions of

any law. Plaintiffs have claimed relief for preferential right along with perpetual injunction against defendants.

4. Plaintiffs further contended that, they have claimed different reliefs and not ancillary to each other. They have claimed relief for injunction on depended facts. For deciding suit on merit, whole evidence of the proceeding ought to be consider and it could not be decided on basis of version of plaintiff. Plaintiffs challenged the sale deed executed in favour of defendant no.1 is null and void and prayed to restrain defendants from causing obstruction to his possession. The plaint could not be rejected in part. The application filed by defendants devoid merits. Thus, prayed to reject the same.

5. I have heard counsels for both sides at considerable length. Counsel for plaintiffs in addition of his oral argument filed written notes of argument at Exh.172. Both counsels to buttress their submissions, relied over authorities of Hon'ble Apex Court and High Court on record. Most of the authorities filed by them are related with the settled position of law such as maintainability of the application, preferential right, role of court while dealing with the applications U/Order 7 rule 11 of C. P. Code. Therefore, for avoiding repetition of settled law and discussion thereon, I have referred only relevant authorities cited by parties to support their submissions, hereinafter at relevant stage.

6. At the very first an objection raised by plaintiffs on ground of maintainability of the application as it filed at belated stage and their claim for preferential right have been surrender by accepting legal provisions and settled law laid down by the rulings of

Hon'ble Apex Court and High Court. The counsel for plaintiffs fairly admitted the settled position in respect of maintainability of application and plaintiffs claim regarding their preferential right.

7. Per contra, counsel for defendants submitted that, the main relief of plaintiffs regarding claim of their preferential right is not maintainable in legal manner. Therefore, their consequential relief of perpetual injunction too not maintainable. Herein, counsel for defendants placed his reliance over the Judgment of Hon'ble Apex Court in *Nikhil Mehta & Ors. Vs. Hitesh Sanghavi & Ors.*¹. Herein Hon'ble court observed that, once the plaint or the suit in respect of the main relief stands barred by time, the other ancillary relief claimed therein also falls down.

8. Ld. Counsel for plaintiffs to counter the submission of counsel of defendants submitted that, the rejection of plaint in part is not permissible. Plaintiffs in present suit specifically pleaded their joint possession over suit property and act of defendants regarding execution of sale deed in favour of defendant no.1. Further, plaintiffs since inception of suit contended that, suit property has not been divided between them and they having joint possession over the same. Plaintiffs in claimed clause of plaint specifically contended that, on basis of alleged agreement to sale dtd.17.05.2008, defendants intend to dispossess them from the suit property and threaten to change nature of suit property. He placed his reliance over the Judgment of Hon'ble Apex Court in *Central Bank of India & Ors. Vs. Prabha Jain & Ors.*² Herein Hon'ble Court observed that, even if one relief

1 2025 Live Law SC 428.

2 Civil Appeal No.1876/2016.

survives, the plaint can not be rejected U/Order 7 rule 11 of C. P. Code.

9. Considering the above admitted position of settled law by both parties, the only question left before this court whether the relief of perpetual injunction claimed by plaintiffs is ancillary to their primary relief and therefore plaint liable to be reject or not. Admittedly, it is settled position of law that, while deciding application for rejection of plaint only the contents of plaint and documents filed along with plaint ought to be consider. In bare reading of plaint it averred that, plaintiffs specifically contended about their joint possession over suit property and obstructions at the hands of defendants on ground of alleged sale deed. They have claimed their preferential right to purchase share of suit property on ground of their joint possession over the same. Herein, the reliefs claimed by plaintiffs are completely different and not ancillary to each other.

10. The authority cited by defendants supra **Nikhil Mehta** having altogether different facts than case in hand. In that case, respondent / plaintiff has filed suit for declaration of will and codicil to be null and void along with grant of permanent injunction for restraining defendant from entering in to any transaction infurtherance of aforesaid will and codicil. However, in present suit plaintiffs have not claimed relief of permanent injunction on basis of their first relief of preferential rights. Hence, the Judgment cited by defendants supra is not useful for them.

11. Hon'ble Apex Court recently in **Vinod Infra Developers Ltd.**

*Vs. Mahaveer Lunia & Ors.*³ observed that, a plaint can not be rejected in its entirety merely because one of the prayer or relief sought is legally untenable. In case in hand, though relief claimed by plaintiffs regarding their preferential right is legally untenable, however, their relief for perpetual injunction is valid one. They have specifically pleaded for the same. Thus, the above ruling is squarely applicable to this case and guided me to conclude the same. Therefore, in result of above discussion I pass following order,

ORDER

1. Application stands rejected.
2. Suit is pretty old and therefore parties are directed to expedite the trial.
3. Cost in cause.



Place - Ajara.
Date – 19.09.2025.

(R. P Thore)
J.O.Code MH02897
Civil Judge, Junior Division,
Ajara.