

Regular Civil Suit No.169/2022

Lila Rajaram Shinge
Vs.
Vijay Mahadev Bankar oth 2

Order Below Exh.21

This is an application for rejection of plaint under Order VII Rule 11 of Code of Civil Procedure (herein after referred as CPC) filed by defendant No.1 of the present suit.

02. It is submitted by the present defendant that plaintiff filed this suit merely for grant of injunction. Plaintiff filed suit with intend to obstruct defendant from executing heirship certificate issued in his favour. It is declared by the competent court that defendant No. 1 is legal heir of deceased Mahadev Keshav Bankar vide order dated 28.07.2022 in Civil Misc. Application No. 19/2018. Plaintiff's suit indirectly affect on the rights of defendant No. 1 in view of heirship certificate issued in above proceedings. Therefore, suit is barred by principal of res-judicata and estoppel. Plaintiffs have not claimed any declaration but filed suit only for injunction. Therefore, suit is not maintainable. Suit is not in accordance with the provisions of Specific Relief Act and C.P.C. Suit is not properly valued nor requisite court fee is affixed. Therefore, suit is not maintainable . Thus defendant No. 1 prayed to reject the plaint with costs.

03. Plaintiffs submitted say at Exh. 23 and opposed the application. It is submitted by plaintiff that though the heirship certificate under provisions of Bombay Regulation Act is issued in favour of defendant No. 1 (as per order in Misc. Civil Application No. 19/2008) defendant No. 1 has no right in the suit property. The proceedings of application under provisions of Bombay Regulation Act are summary in nature. The rights of the parties cannot be decided in the said application. The defendants trying to record their names for the weeks of worship fixed for Kedarling Devsastan

Wadiratnagiri by using said heirship certificate. Therefore, suit is not barred by principal of res-judicata and estoppel. The present application is pre-mature. Therefore, prayed to reject the application.

04. Heard the advocates for plaintiffs and defendant No.1 at length. Both the advocates argued as per their respective submissions. The advocate for defendant No. 1 argued that heirship certificate issued by competent court cannot be challenged by filing suit in the court. There are other remedies available in case parties aggrieved by the order of issuance of heirship certificate. Advocate for defendant No. 1 relied on Judgment of **Hon'ble Bombay High Court** in Case of **Parvatibai More V/s. Surekha Surjuse** reported in **2019(3)ABR 164**, wherein it is held by Hon'ble Bombay High Court that "*Heirship certificate already granted in favour of other party pertaining to same deceased person then remedy available to party is to initiate proceedings under section 383 of Act or for annulment of certificate or to file suit under section 387 of the Act.*". In this case heirship certificate was issued declaring heirs of deceased and the aggrieved person thereafter filed second similar application/proceedings and prayed for heirship certificate declaring heirs of same deceased person, which ultimately turned down by the Hon'ble High Court. In present proceedings suit is for injunction at the most it called as to restrained execution of heirship certificate. In present suit heirship certificate is not challenged directly or new heirship certificate is claimed. Therefore, the facts of present proceedings and case cited supra are different and not helpful to the defendant No.1.

05. The advocate for defendant No. 1 further relied on Judgment of **Hon'ble Apex Court** in Case of **TVR Reddy V/s.M.Mallappa** reported in **AIR 2021 SC 4293** wherein it is held by Hon'ble Apex court that "*when there is cloud over title; mere suit for injunction is not maintainable*". He further relied on Judgment of **Hon'ble Apex Court** in Case of **G.Nagraj V/s. B. P. Mrutunjayanna** reported in **2023 live law (SC)311** wherein it is held by Hon'ble Apex court that "*averments in plaint and document with the plaint*

are the only factors for consideration of application under order 7 Rule 11” . He further relied on Judgment of **Hon'ble Bombay High Court** in Case of **Ganpati Vinayak Achwal** in writ petition No. 2177/2014 wherein it is held by Hon'ble Bombay High court that " *Grant of heirship certificate is formal recognition of existing status as an heir*".

06. Perused the application, say and the record of the case. It is submitted by the defendant No.1 that this suit is not maintainable as the competent court declared defendant No.1 as legal heir of deceased and the said order cannot be challenged in to present suit. Therefore, such challenge would amounts to second proceedings thus suit is barred by principal of res-judicata and estoppel. It is pertinent to note that present suit is for injunction while earlier proceedings are under provisions of Bombay Regulation Act which is in fact summary in nature. Therefore at this stage in the above discussed both the proceedings cannot said to have that same substantial question. Further it is also not act as estoppel against plaintiffs. It is needless to say that the question of res-judicata and estoppel is always a mixed question of law and facts. Thus at this primary stage it cannot be said by mere perusing the plaint that present suit of the plaintiff is barred by principal of res-judicata & estoppel.

07. Defendant No.1 further submitted that when there is cloud over title mere suit for injunction is not maintainable. It is true that when the title is under challenged; mere suit for injunction is not maintainable. It is pertinent to note that application under provision of Order VII Rule 11 of C.P.C. is required to be decided merely on the contents of plaint and the documents with plaint. The contents of written statement are no concern with the present application. Therefore, by reading plaint itself it cannot be said that there is cloud over the plaintiffs title. Whether there is cloud over plaintiff's title is also mixed question of law and facts. Therefore, on this ground at this primary stage it cannot be said that suit is barred by law.

08. It is also pertinent to note that whether the suit is properly valued and appropriate court fees paid the plaintiff is also a question mixed of facts and laws. Therefore, it cannot be decided threshold at this primary stage. It is also submitted by the defendant No.1 that heirship certificate cannot be challenged by filing suit therefore, suit is not maintainable. The present suit is merely for injunction and it does not directly challenges heirship certificate. Further no apparent provision high lighting direct bar to file present suit is mentioned by the defendant No.1 in the present application. Therefore, suit cannot be said to be barred by any provision of law at this primary stage.

09. It is settled principal that, no pedantic approach should be adopted to defeat ends of justice on hair-splitting technicalities. Further, the remedy under Order VII Rule 11 of CPC is threshold remedy. Thus, in the light of aforesaid facts and circumstances, the suit cannot be said to be thrown out threshold therefore, the application is liable to be rejected. Hence, following order -

: ORDER :

- 1) The application is rejected.
- 2) Cost in cause.

Place: Panhala.
Date: 11.01.2024.

Sd/-
Atul A. Kore,
Jt. Civil Judge Jr. Dn., Panhala.