

MHKO190004712024ORDER PASSED BELOW EXH.25

IN

R.C.S No.190/2024Namdev Dattatraya (Dattu) Patil Vs. Masu Dattatraya
(Dattu) Patil

(Date:13/09/2024)

1. Defendant No.1 has filed the present application under Order-VII Rule 11(a), (b) and (d) of the Civil Procedure Code (in short C.P.C.) for rejection of the plaint.

2. It is contention of defendant No.1 that the plaintiff has filed the present suit for partition and injunction. However, the plaintiff and defendant No.1 are residing separately since, 1994. As per the contentions of the plaintiff, in the year 1994 there was partition of agricultural landed properties. The said contentions shows that there was partition between plaintiff and defendant in the year 1994. The plaintiff had taken Grampanchayat property Nos.1438 & 1440 and the suit property was given to defendant No.1. Since, May 2024 defendant No.1 started construction in the suit property, but the plaintiff has filed this suit in July, 2024. Defendant No.1 prayed for rejection of the plaint on the ground that the valuation of the suit property is wrong, there is no cause of action to the present suit and the suit is not within limitation.

3. The plaintiff has filed his say at Exh.29 and strongly opposed the application. It is contended that yet the suit property is not partitioned by metes and bounds. Defendant No.1 was residing in Northern side's half share of the suit property and the plaintiff was residing in Southern side's half share in the suit property. Grampanchayat property Nos.1438 & 1440

are self acquired properties of the plaintiff. The cause of action given in the suit is true and correct. The valuation of the suit is correct. Hence, he prayed for rejection of the application.

4. Heard both sides.

5. Following points arise for my determination against which I have recorded my findings thereon for reasons given below.

Sr. No.	Points	Findings
1.	Whether the plaint does not disclose a cause of action?	In the negative.
2.	Whether the suit is under-valued ?	In the affirmative.
3.	Whether the suit is within limitation?	At this stage, in the affirmative.
4.	What order?	As per final order.

- REASONS -

As to Point No.1 :-

6. The Ld. Advocate for defendant No.1 submitted that there is no cause of action to the present suit. In the year 1994, there was partition between the plaintiff and defendant No.1 and suit property was allotted to the share of defendant No.1. As such, the cause of action given in the plaint is totally false. Hence, he prayed for rejection of the plaint.

7. The Ld. Advocate for the plaintiff submitted that there is no partition of the suit property between himself and defendant No.1 by metes and bounds. The cause of action given in the plaint is true and correct. Hence, he prayed for rejection of the application.

8. It is settled law that while considering the application under Order VII Rule 11 of the Code of Civil Procedure, only averments in the plaint should be considered. It is also settled law that the Court may consider documents produced alongwith the plaint.

9. I have gone through the contentions of the plaint. It appears that the plaintiff has filed the present suit for partition and perpetual injunction. The plaintiff has given cause of action in the plaint para No.19. Whether the said cause of action is true or false can be decided at the time of final hearing. At this stage, it cannot be said that the said cause of action is false. From perusal of the plaint, it appears that it discloses a cause of action. Hence, I answer point No.1 in the negative.

As to point No.2:-

10. It is the objection of defendant No.1 that the price of the suit property is very high and the valuation of the suit is wrong. The Ld. Advocate for the plaintiff submitted that on the basis of valuation shown in the assessment extract of the suit property, the plaintiff has valued the suit and paid requisite court fees thereon. The said valuation is correct.

11. The plaint shows that the plaintiff has made the valuation of the suit at Rs.84000/- and out of the said valuation, he has paid court fees on his half share. However, as per Section 6 (v) of the Maharashtra Court Fees Act, the valuation of the suit for possession of the house property is to be made on the basis of its market value. The plaintiff has not shown anything which clarifies that he has made valuation of the suit at the rate of current market value of the suit property. This fact itself shows that the

valuation of the suit is not proper and the relief claimed is under valued. Hence, I answered point No.2 in the affirmative.

As to point No.3:-

12. It is the objection of defendant No.1 that in the year 1994, there was partition between the plaintiff and defendant No.1. As such the suit is not within the law of limitation. Per contra, it is the contention of the plaintiff that the suit property is not partitioned by metes and bounds and therefore the question of limitation does not arise.

13. Whether the suit property was partitioned in the year 1994 or not is a matter of final hearing and at this stage, it cannot be concluded that the suit property was partitioned in the year 1994. Moreover, the issue of limitation involved in the suit is a mixed question of law and facts. Therefore, at this preliminary stage, it cannot be said that the suit is not filed within the law of limitation. Hence, I answer point No.3 in the affirmative.

As to point No.4:-

14. In view of the above said discussion and findings on point Nos.1 to 3, the application deserves to be allowed partly to the extent of under-valuation of the suit. As per order VII Rule 11 (b) of the Code of Civil Procedure, if the relief claimed is under valued, then the court has to fix a time so as to enable the plaintiff to correct the valuation of the suit. In the result, I pass the following order.

- ORDER -

1. The application (Exh.25) is partly allowed.
2. The plaintiff is directed to correct the valuation of the suit and pay requisite Court Fees on correct valuation on or before next date.
3. If the plaintiff fails to comply with the above said direction, the plaint is liable to be rejected.
4. Costs will be costs in main cause.
5. Both parties to take note of this order and comply accordingly.

Date:13/09/2024

(D. M. G. Malidwale)
Civil Judge Junior Division,
Radhanagari.