



Order below Exh.414 in RCS No.181/2008

Kalubai Vs. Pandurang & Ors.

This is an application filed by defendant Nos.1,8,13,14, 35,46,47,50,59 and 60 (in short 'applicants') under Order XI Rule 1 CPC for directing plaintiff to provide better particulars in respect of facts pleaded by her in para No.1 of the plaint, on the grounds stated in the application. The contents of application in short are:- that plaintiffs in para No.1 on page No.3 of the plaint has specifically pleaded that defendant No.1 has sold other lands without knowledge and consent of plaintiff. Those alienation are prior to 12 years and that's why they are not included as suit lands. According to para No.333 of Hindu Law (Mulla) this is not exception nor exemption, so plaintiffs are required to give detailed particulars that how many lands and to whom those lands were alienated. That PW No.1 also failed to explain on this point and to remove the ambiguity, it is necessary to direct plaintiffs to submit better particulars. Hence, the application.

2. Plaintiffs have filed their say at **Exh.418** and raised objections. The contents of their say in short are:- That the defendant No.1 has filed Spl.CS No.9/2005 and in the said suit the defendants has deposed below **Exh.98**, wherein the defendant No.1 has admitted that he has sold 10 to 12 acres of land. He has also admitted that he has sold the land to defendant No.35 during the pendency of present suit and he has also sold land out of Sy.Nos.9 and 10 of village Dapka, Tq.Nilanga. It clearly indicates that defendant No.1 had full knowledge about the transportation that took place before 12 years of filing of this suit and the present defendant has raised the point of non joinder of party. Thereafter, plaintiffs have made amendment in the plaint and included many persons as party to the present suit. That the suit is pending since year-2008 and it is pending for evidence of defendant No.1, who is interested in prolonging the matter. The application is not maintainable and hence, requested to reject it.

3. Defendant No.67 has filed pursis at **Exh.420** and adopted the say filed by plaintiffs at **Exh.418**. Other defendants failed to file their say. Perused application and say. Heard learned advocate Shri.

U.S.Jadhav for applicants, learned advocate Shri.A.S.Makane for plaintiffs and learned advocate Shri.D.B.Salunke for defendant No.67. They have submitted in the line of their application and say respectively. Record shows that plaintiffs have filed this suit for partition and separate possession in respect of suit properties described in para No.1 of the plaint. In para No.2 of the plaint the plaintiffs have contended that defendant Nos.1 and 2 had unauthorizedly and without consent of plaintiffs have illegally sold major portion of suit lands to defendant Nos. 3 to 12 and these alienation were made behind the back of plaintiffs. Before going into the merits of this application let us see the provisions of Order XI Rule 1 CPC under which the present application is filed.

4. Order XI Rule 1 CPC deals with the provisions of discovery by interrogatories. As per this provision any party to the suit, by leave of the Court, may deliver interrogatories in writing for the examination of the opposite party/parties. This is not the situation in the present case. What applicants are asking is that plaintiffs be directed to furnish better particulars in respect of the alienation made by defendant No.1 and pleaded by them in the plaint. Plaintiffs have clearly stated in their say at **Exh.418** that defendant No.1 has clearly admitted in the cross examination in Spl.CS No.9/2005 regarding those alienation. Plaintiffs have filed photocopy of deposition of present defendant No.1 in Spl.CS No.9/2005, wherein he is plaintiff, at list below **Exh.419/1**. After perusing the deposition of defendant No.1, it reveals that in para No.10 of the cross examination he has admitted that he has sold the portion of lands without obtaining the consent of his other family members. Considering the nature of suit at this juncture, I do not deem fit to direct plaintiffs to furnish better particulars in respect of the facts pleaded by them in the plaint. Besides, the application is also not legally maintainable. Hence, I pass following order:-

ORDER

1. Application is rejected.
2. No order as to costs.

Date :01/01/2024

Sd/-
(Ashish B. Marlecha)
Civil Judge (Sr.Dn.),
Nilanga, Dist. Latur.