

ORDER BELOW EXH. 62

01. Present application is filed by the Decree Holder to conduct the examination of the objection petitioner under Order X of the C.P.C. and dismiss the objection petition summarily.

02. In short, it is the contention of the D.H. that son of J.D. filed the objection petition under Order XXI Rule 97 of the C.P.C. and raised objection contending that suit plot is allotted to him in partition as per partition deed dated 11.05.2010. J.D. submitted that he has not executed any partition deed in favour of objection petitioner. Mutation entry is not certified on the basis of partition. The objection raised by third party is only to avoid the execution of decree. Therefore, considering the possibility of frivolous litigation, it is necessary to consider the silence of objection petitioner. Therefore, it is necessary to exercise the powers under Order X of the C.P.C in view of the ratio laid down by the Hon'ble Supreme Court in the case of **T. Aravindam Vs. T. V. Satyapal** reported in **1977(4) SCC 467** and **N. V. Shrinivas Murthi Vs. Mariyamma** reported in **AIR 2005 SC 2897**. Hence, prayed to allow the application.

03. Objection petitioner filed say and opposed the application contending that application under Order X of the C.P.C. can be filed prior to framing of the issues, thereafter, such type of application is not maintainable. In present matter, issues

are already framed. In view of the case law of **Onkarmal Bachharaj Vs. Priti Sitaram Mundada** reported in **1994 Law Suit(Bom) 470**, such type of application is not maintainable. To prolong the matter application is filed. Hence, prayed to reject the application.

04. Heard both the parties. It is argued by Advocate Sabnis for the D.H. that the objection petitioner claimed the right over the suit property on the basis of partition deed. J.D. specifically contended that no such partition is effected. Therefore, there is possibility that the partition deed is executed anti dated. There is also possibility of preparing the false and fabricated document of partition. Therefore, in view of the ratio laid down by the Hon'ble Supreme Court, it is necessary to examine the objection petitioner under Order X of the C.P.C to curb the frivolous and false litigation. Hence, prayed to allow the application.

05. On the contrary, it is argued by Advocate A. H. Paul for the objection petitioner that the application is not tenable. The provisions of Order X are applicable only prior to framing of issues in the matter and not thereafter. The subsequent stage of hearing must be prior to framing of issues. The examination can be conducted prior to that and not thereafter. Hence, prayed to reject the application.

06. Upon hearing both the parties and perusing their

respective contentions, it is not disputed fact that in present matter already the issues are framed. On perusing the judgment of Hon'ble Supreme Court in **T. Aravindam** it appears that the Hon'ble Supreme Court made it clear that to curb the litigation, it is necessary to examine the party under Order X of the C.P.C. on material facts. The Court is having power to do so to curb the frivolous and false litigation.

07. On perusing the judgment of Hon'ble Bombay High Court in **Onkarmal Bachharaj**, it appears that, the Hon'ble High Court has made it clear that the provisions of Order X of the C.P.C. are applicable only prior to framing of issues and not thereafter. The Hon'ble High Court also made it clear that the words 'Subsequent hearing' used in Order X Rule 2 Sub Rule 2 of C.P.C. is applicable only prior to framing of the issues and not thereafter. Considering the ratio laid down by the Hon'ble Bombay High Court and matter before me, already in present matter issues are framed, therefore, the provisions of Order X cannot be invoked at this stage.

08. So far as case law of **N. V. Shrinivas Murti** relied by the D.H. is concerned, the D.H. has not filed the copy of that case law though he relied on it. Therefore, I humbly submits that applicability of that case law cannot be considered. As in present matter issues are already framed and affidavit of objection petitioner is on record and the matter is for the cross-examination of objection petitioner, the present application is not tenable. Though J.D. denied the execution of partition deed, that fact can

be considered while deciding the objection petition and that cannot be a ground to invoke the powers under Order X of the C.P.C. Considering all these things, I do not found any substance in the application and the application deserves to be rejected. Hence, I pass the following order,

ORDER

Application is rejected.

Date : 13.01.2020.

Civil Judge Senior Division,
Nilanga.