

MHLA110005192021



**COMMON ORDER BELOW EXH.63 AND
EXH.65 IN REGULAR CIVIL SUIT NO.570/2021
AFSANABI VS. MOHAMMAD & ORS.**

1. This is an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of plaint.
2. Perused the application and reply thereon. Heard Learned Counsel for the both sides.
3. Learned Counsel for defendant Nos.1 to 3 and 6, 7 and 8 submitted that, plaintiff has filed this suit for partition and cancellation of compromise decree passed in National Lok-Adalat in RCS No.380/2020 and 381/2020. Defendant Nos.1, 2, 7 and 8 have obtained the compromise decree fraudulently in collusion with each other. Order XXIII Rule 3-A of C.P.C. bars the suits to challenge the compromise decree. Therefore, the suit is barred by the law and it comes within the ambit of Order VII Rule 11. Hence, it is prayed to reject the plaint.
4. Plaintiff has resisted the application and submitted that, the application is false, baseless, not maintainable and against the provisions of law. The defendants had filed false suit for partition along-with cancellation of compromise decree. Plaintiff has every right to challenge the decree as plaintiff's civil right is included in the said decree. Plaintiff was not party to the aforesaid compromise decree. Defendants have filed this baseless and groundless application. Hence, it is prayed to reject the application.

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5. The following points arise for my determination to which I have recorded my findings for the reasons stated as under:

<u>Sr.No.</u>	<u>Points</u>		<u>Findings</u>
1)	Whether the suit barred by law?	...	In the negative.
2)	What order?	...	As Per Final Order.

REASONS

AS TO POINT NO.1 :-

6. Before scrutinizing the plaint and averments, it will be proper to have glance at the settled law regarding the Order VII Rule 11 of the Code of Civil Procedure, 1908. Order VII Rule 11 of the Code of Civil Procedure, 1908, makes it clear that relevant facts which need to be looked into for deciding the application thereunder are the averments in the plaint. The averments in the written statement are immaterial and it is the duty of the court to scrutinize the averments in the plaint. At this stage, pleas taken by the defendant in the written statement are wholly irrelevant while scrutinizing the plaint averments. It is bounded duty of the Court to ascertain the material for cause of action.

7. It is argued on behalf of defendants that, Rule 3-A Order XXIII of C.P.C. bars the suit to set aside the decree on the ground that the compromise on which the decree was passed was not lawful. Agreement or compromise which is clearly void or voidable shall not be deemed to be lawful and bar under Rule 3-A shall be attracted if the compromise on the basis of which the decree was passed was void or voidable. Ld. Advocate for defendants relied upon the following judgments:-

1. ***Civil Appeal No.439/2022 (Rajapushpa Pvt. Ltd. Vs. Shailesh Prasad),***
2. ***R. Rajanna Vs. S. R. Venkataswamy & Ors. (2014 CJ (SC) 803)***
and
3. ***M/s. Sree Surya Developers and Promoters Vs. N. Sailesh Prasad and Ors. (2022 ALL SCR (ONLINE) 151)***

Hon'ble Apex Court in the aforesaid judgment observed that, no independent suit can be filed for setting aside compromise decree on the ground that compromise is not lawful in view of bar containing Rule 3-A. Consent decree as an estoppel is valid and binding unless it is set aside by the Court which passed the consent decree. It is further observed and held that an agreement or compromise which is clearly void or voidable shall not be deemed to be lawful and the bar under Rule 3A shall be attracted if compromise on the basis of which the decree was passed was void or voidable.

8. It is seen that, present suit is filed by plaintiff for partition, separate possession and for declaration that the decree passed in RCS No.380/2020 and 381/2020 is not binding on plaintiff. It is seen that, the relief sought by plaintiff regarding the compromise decree is consequential relief and main relief is in respect of partition and separate possession for which an independent substantive suit is maintainable. Therefore, for the other relief sought by plaintiff, an independent suit under XXIII Rule 3-A shall not be barred.

9. Moreover, it is specifically averred by plaintiff that, decree in RCS No.380/2020 and 381/2020 was fraudulently obtained by the defendant with intent to grab the suit properties.

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It is well settled proposition of law that, the judgment or decree obtained by fraud on the Court is nullity and nonest in the eyes of law. Therefore, the provisions under Order VII Rule 11(d) and Order XXIII Rule 3-A of the Code of Civil Procedure, 1908 will not be applicable to the present suit. In aforesaid circumstances, I find that the suit is tenable and not barred by law.

10. In view of the aforesaid discussion, I hold that the application is liable to be rejected. Hence, I pass the following order:

ORDER

- 1) Application at Exhibit Nos.63 and 65 are hereby rejected.
- 2) Suit to proceed further.

Nilanga
Dt.:- 19/07/2024

(Smt. V. D. Bhosale)
Jt. Civil Judge Sr. Dn., Nilanga.