

ORDER BELOW EXH. 14

(Passed on : 21.03.2017)

01. Perused application. The defendants have filed their reply at Exh. 19 and pleaded that the application is illegal. The plaintiffs have no concern with the suit property. The plaintiffs have to show prima facie case and their interest in the suit property. The plaintiffs have no right to claim ownership and possession over suit property. The plaintiffs father had filed RCS No. 191/1980 for possession of the suit property. The said suit is dismissed and an appeal filed against it is also dismissed. The plaintiffs have concealed said fact from the Court. In that suit also an application for appointment of receiver was filed and rejected. The plaintiffs have no concern with the income of suit property, hence, application be rejected.

02. Considering rival pleadings of both parties, following points arise for my determination, and I have recorded my findings against them for the reasons discussed below :-

POINTS**FINDINGS**

- | | |
|--|-------------------------|
| 1. Whether the plaintiffs are entitled for relief of appointment of receiver as prayed ? | ... <u>In negative.</u> |
|--|-------------------------|

2. What order ?

... Application
rejected.

REASONS

As to Points No. 1 & 2 :-

03. Heard argument advanced by learned counsel for both parties at considerable length. Perused case record. The plaintiffs have filed this suit for declaration of ownership of suit property. They have filed this application on the ground that they are owners of the suit property and defendants are taking income from the same illegally. It appears that the defendants have filed certified copy of Exh. 232 filed in RCS No. 191/1980 at Exh. 27. On perusal of the same, it reveals that said application of filed for appointment of receiver. The said suit was also for possession land survey No. 68. This suit is also in respect of same property. The previous suit was filed by the father of the plaintiff. Said application was rejected vide order dated 07.07.1997. The defendants have also filed certified copy of judgment of RCA No. 90/1998 at Exh. 28. It is pertinent to note that in that appeal the present plaintiffs were the parties as L.Rs. of their father. The said appeal was filed by the father of plaintiffs against the judgment and decree of RCS No. 191/1980. Said appeal is dismissed on 05.08.2005. The plaintiffs have filed this suit in respect of same property and for same relief. Therefore, it appears that the plaintiffs have no prima facie case. I am of the view that for grant

of relief of appointment of receiver, there must be strong prima facie case in favour of the plaintiffs. No such situation is available in the present suit. Considering above facts and circumstances on record, I am inclined to hold that the plaintiffs failed to prove that they are entitled to relief of appointment of receiver. In the result, I answered point No.1 in negative. Therefore, application deserves to be rejected. Hence, following order.

ORDER

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

Nilanga.
Dated : 21.03.2017.

Sd/-
(R. N. Barad)
Civil Judge, Senior Division,
Nilanga.