

MHLA110015042018



Order below Exh.111 in RCS No.438/2018

Fayaz Vs. Usman

This an application filed by defendant Nos.7, 8, 10 and 12 to 15 (in short 'defendants') under Order VII Rule 11 CPC for rejection of plaint on the grounds mentioned in the application. The contents of application in short are:- that the plaintiff has filed this suit for partition of the suit lands bearing Gat/Sy.Nos.7/7/K and 74/58/B, situated at village Jau, Tq.Nilanga, Dist.Latur. That the suit is barred by law because the concept of partition is completely foreigner to the Muslim Community and therefore proceeding with the suit will be wastage of time. It is settled law that if a relief cannot be granted then the plaint is liable to be rejected. Besides, plaintiff has challenged sale deeds in favour of defendant Nos.4 to 16 by way of cancellation, however, he has failed to pay requisite Court fee and as failed to value the suit properly. Hence, the application.

2. Plaintiff has filed his say at **Exh.113** and raised strong objections on several grounds. Plaintiff denied the contents of application in toto and requested to reject the application. Perused application and say. Heard both the sides. Both of them have submitted in the line of their application and say respectively. On two counts defendants are requesting to reject the plaint one is suit barred by law and other is under valuation of suit coupled with non payment of requisite Court fee.

3. So far as, point No.1 is concerned no doubt shares are determined in the Muslim community and they are governed as per provisions of Mahomedan Law. However, after perusing entire claim, it appears that plaintiff has also sought declaration in respect of the sale deeds in question. Thus, it cannot be held that the plaintiff has only claimed the relief of partition and separate possession. Plaintiff might have claimed declaration without disclosing his determined share but it will amount as defective pleadings. It is settled position of law that a plaint cannot be partly rejected but it has to be rejected in whole. As plaintiff has also claimed relief of declaration, in my opinion, the Court cannot come to the conclusion that the suit is barred by law and plaintiff has not paid requisite Court fee by under valuing the suit. In the result, I pass following order:-

ORDER

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

Date : 09/01/2025

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