

Order Below Exh.34 in R.C.S. 86/2016
MHLA130005092016

Illahibaksh Mahebubali Sayyad
Vs.
Matinali Illahibakshi and Other

1. This suit is filed for declaration of ownership and injunction. On service of suit summons the defendant no.6 and 7 have appeared and filed their written statement at Exh.31.

2. Now defendant no.6 and 7 moved this present application under Order 7 Rule 11 of the Code of Civil Procedure and prayed to reject the plaint. They contended in present application that the plaintiff has filed the present suit by joining the hands with defendant No.1 to 5 in order to harass them. The present suit does not disclose any cause of action against them. The present suit is came to be filed after 35 years from the alienation of the suit property. Therefore, it is barred by law of limitation. The suit also undervalued. The plaintiff also failed to add all the necessary parties in the suit. Hence, he prayed to reject the plaint.

3. On the other hand, plaintiff filed his say to this application vide Exh.36 and denied all the averments made by the defendant no.6 and 7. According to him, the contention made in the application are false. He has not filed the present suit in collusion with defendant no.1 to 5. All the defendants are denying his ownership over suit property. Further, according to him the suit property is inherited to him from his father. So, he is claiming the relief on the basis of title. So, there has been cause of action to file the suit. The suit is properly valued and

sufficiently court fee is paid. All necessary parties are made in the suit. Hence, he prayed to reject the application.

4. I perused the application and say. I also gone through the averments made in plaint and documents attached therewith. The Ld. Advocate for both side are absent to argue upon the application since long time. Hence, I proceeded further to decide the application. Considering the plaint, documents on record, application and say the following points come for my determination. I have given my finding along with reasons thereon, as follows.

Points for Determination

Sr. No.	Points	Finding
1.	Whether the plaint does not show cause of action ?	No.
2.	Whether the suit is barred by Law of Limitation?	No.
3.	Whether the plaintiff has undervalued the suit?	No.
4.	Whether the Plaint is deserved to be rejected as per Order 7 Rule 11 of the Code of Civil Procedure?	No.
5.	What Order?	Application is Rejected.

REASONS

As to Point No.1 to 4

5. It is the contention of defendant no.6 and 7 that the plaint

does not show cause of action. The suit property is alienated before 35 years ago and now the suit is barred by law of limitation. It is also contention of defendant that the suit is undervalued and the state is not added as a party to the suit.

6. As per the contentions in the plaint, the plaintiff is father of defendant No.1 to 5 and present applicants are his daughter-in-law and grand daughter. Further, as per the contentions of the plaint, for taking benefits of government schemes, the plaintiff executed nominal partition and mutated the suit property on the name of defendant No.1 to 5 and his deceased son Marufali. The present applicants are wife and daughter of his deceased son Marufali. When, the said partition was executed the all his sons were minor and he only done so for the benefit of his family. There was no real partition between them. But, by taking benefit of mutation entries the defendants are denying his title. The said contention in plaint clearly shows that the plaintiff have cause of action to file this suit.

7. The plaintiff specifically stated that, by taking benefit of mutation entries defendant No.1 to 5 are trying to alienate the property. He further on 17/09/2016, inquired about it to them but they answered him arrogantly. The plaintiff has calculated the cause of action since 17/09/2016. So, as per the contents in plaint, the suit is well within limitation. It is settled principal of law that for the purpose of deciding the application vide Order 7 Rull 11 of the Code of Civil Procedure the court cannot go beyond the pleadings in the plaint. So, the contention of applicants that the property is already alienated

before 35 years of the filing of the suit is cannot be taken into account at the present stage.

8. As per the contention in application the suit is undervalued. Because, the suit property is acquired by the government and the plaintiff has filed present suit to deprive present applicant from claiming the compensation amount. It means the applicants want to say that the plaintiff should have paid the court fee of upon the compensation amount and the state needs to be made as a party in present suit. But, the present suit is for declaration of ownership and injunction. Accordingly, he has paid the court fee on the relief of declaration and injunction. In my opinion as per the prayer of the plaintiff he has paid appropriate court fees.

9. Hence, considering the whole pleadings in plaint, the plaint is not deserves to be rejected as per the provision in Order 7 Rule 11 of the Code of Civil Procedure. So, I give the answer to Point no.1 to 4 in the negative.

As to Point No.5

10. Considering the answers given to Point No.1 to 4 and as giving answer to Point no.5, I proceed to pass following order.

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ORDER

This application stands rejected.

Sd/-

(S. D. Yadav)

Jt.C.J.J.D., Renapur

Date : 17/07/2019

C E R T I F I C A T E

I affirm that the contents of this P. D.F. file order are same word for word as per original order.

Name of Stenographer	: Dhanshri G. Bhadke
Court Name	: S. D. Yadav, Jt.C.J.J.D., Renapur.
Order Date	: 17/07/2019
Order signed by presiding officer on	: 17/07/2019
Order uploaded on	: 17/07/2019