

ORDER BELOW EXH. NO.57 IN SPL.C.S.NO.80/2023
Sajedabegum and another Vs. Jakerabi and others.
(Passed on this *5th Day of December, 2024*)
CNRNO.MHLA170009872023

Defendant No.1 has filed application under Order VII Rule 11 of the Civil Procedure Code for rejection of plaint. It is submitted by defendant No.1 that, the plaintiffs have filed suit for partition for getting 1/8th share in the suit property. Further plaintiffs have prayed for cancellation of sale deed bearing No.1243/1985 dated 07.11.1985 which is executed in favour of defendant No.1 and prayed for declaration that the said sale deed is not binding on plaintiffs. Plaintiff have further prayed for cancellation of decree passed in RCS No.697/15, RCS No.158/2018 and RCS No.358/2019. Defendant No.1 has executed sale deed bearing No.1243/1985 dated 7.11.1985 for the land ad-measuring 83R situated in S.No.271 at AUSA in favour of defendant No.6.

2. According to the said sale deed the M.E.No.3027 mutated in the record of rights in the year 1985 and name of defendant No.6 is inserted in the column of record of rights of the 7/12 extract. Plaintiffs have not challenged the said sale deed within limitation. Thereby the suit is barred by limitation as per the ratio laid down by the Honourable Supreme Court in the case of Raghuvendra Sharansingh Vs. Ramprasanasingh. The decree passed in SCR No.697/2015 on 12.12.2015 by the Maha Lokadalat. Therefore, this Court has no jurisdiction to cancel the decree. Hence, the suit being filed by the plaintiff is beyond limitation cannot survive. Thus, defendant No.1 prayed to reject the application.

3. Perused the say (Exh.55) of plaintiffs. They have denied contents of the application of defendant No.6 submitting that, principle laid down in the case of Raghuvendra Sharansingh Vs. Ramprasanasingh are quite different from this suit. It is further denied by plaintiff that, this Court has no jurisdiction to declare decree passed in SCR No.697/2015 as null and void and not binding on rights of plaintiffs as these plaintiffs are not party to the said suit. As per provisions of under section 22(E) of Legal Services Authorities Act 1987 award passed in permanent Lok Adalat is final and binding on all the parties to the suit. According to plaintiffs the said decree is collusive and in order to create complications. Therefore, said decree is illegal and not binding on rights of plaintiffs. The main relief of partition and possession is claimed by plaintiff and allegations made by defendants No.1, 4 and 5 are legal and not binding on plaintiffs. The point of limitation is mixed question of fact and law. Therefore, it needs to be decided after evidence of the parties. Hence, at this state the plaint cannot be rejected as prayed by defendant No.1.

4. In view of rival contentions of defendants and plaintiffs following point arose for my determination. I have recorded by findings thereon for the reasons as follows.

Sr.No.	Points	Findings
1.	Whether the defendants prove that the suit is barred by any law?	No.
2.	What order?	The application is rejected.

REASONS

5. Heard learned counsel for both the parties. Perused the record.

As to point No.1 :-

6. After going through the plaint, documents filed by the plaintiffs and defendants, it is crystal clear that, it is necessary to prove by way of leading evidence that the suit is barred by limitation. The Court has no jurisdiction to declare the decree as null and void. Defendant No.1 also has an opportunity to prove his contention during the course of trial by examining witnesses and producing the relevant documentary evidence on record. Hence, the application filed by defendant No.1 cannot be considered. Hence, I answer point No.1 in the negative.

As to point No.2:-

7. As per facts and circumstances discussed in point No.1 at this stage application of defendants No.1 under Order VII Rule II is not tenable and it is liable to be rejected. Hence, in answer to point No. 2, I pass following order:-

ORDER

1. The application is rejected.
2. No order as to costs.

Date : 05.12.2024.
Place : Ausa.

(P. I. Mokashi)
Civil Judge Senior Division,
Ausa.