

MHND270008902020

R.C.S. NO. 98 OF 2020
Sk. Amir & Ors Vs Ahmedibegum & Ors

ORDER PASSED BELOW EXH.30
(PASSED ON 06th JULY-2022)

- 1) This is an application filed under Order 7 Rule 11 of the Civil Procedure Code (the C.P.C.). by defendant No.5.
- 2) Perused application and say of plaintiff thereon. Heard Ld. Advocate for both the parties at length.
- 3) It is submitted by defendant No. 5 that the parties to the suit are Muslim. Therefore, as per the Mohammedan Law partition suit is not tenable. Moreover, the present suit is barred by law i.e. inheritance of Mohammedan Law. It is also submitted that in Mohammedan Law shares are fixed and there is no provision for partition. Sk. Maheboob Sk. Hussain was the owner and possessor of the suit land and suit lands are self-acquired properties. During his life time he has disposed of suit lands in favour of defendant No.5 by way of registered will. He has disposed of his property as per his wish and suit property is already transferred in favour of defendant No.5. Therefore, due to that reason the suit for partition is not tenable. It is also submitted that as per the Mohammedan Law the parties have no right to claim partition and as per observation of Hon'ble Apex Court under Order 7 Rule 11 of the C.P.C. plaint has been rejected. If reliefs claim in it cannot be granted under Law. It is also submitted that Hon'ble Supreme Court observed that the Court has to reject the plaint if it finds that none of the relief sought in it cannot be granted by court.
- 4) On the contrary Ld. Advocate for the plaintiff submitted that there is not provision in Mohammedan Law for preparing will. Hence, in the interest of justice application under say may please be rejected.

5) Plaintiff has filed the suit for partition and separate possession to the extent of share of plaintiff from suit property along with declaration that will-deed No.281 dated 25.03.2015 is not binding upon plaintiff. He also claim perpetual injunction restraining defendant No.5 to selling out the suit property.

6) I have gone through the averments of the plaints the parties to the suit are Mohammedan. It appears from the plaint that the plaintiff has claimed partition. Ld. Advocate for the defendant has not shown any provision which denied to filling of partition suit by Mohammedan Law. No doubt in Mohammedan Law the shares of the parties are fixed but, the parties who were denied their shares they certainly can file partition suit before this Court. I do not find any reason to reject the application. As the defendant No.5 has not shown any provision for the same. I have gone through the plaint it appears that, the plaintiff claim his share from the suit property. She submitted that the suit property is still undivided, the parties to the suit are legal heir and successor of deceased Sk. Mehboob. After the death of Sk. Mehbood she requested the defendant for partition of the suit properties but they have played tactics. It is submission of plaintiff through her plaint is that defendant No.5 has got executed illegal will. Hence, considering averments of the plaint I do not find any reason to reject the plaint under Order 7 Rule 11 of the C.P.C. Accordingly, I pass following order.

:: ORDER ::

1	This application is hereby rejected.
2	Cost of this application in main cause.

Pronounced in open Court.

Place: Mudkhed
Date: 06.07.2022

(**S. B. Dhembare**)
Civil Judge Junior Division
Mudkhed Dist. Nanded.

CERTIFICATE

I affirm that the contents of this P.D.F. File judgment are same word to word, as per the original judgment.

Name of the stenographer	:	A. A. Totre
Court Name	:	J.M.F.C. Mudkhed
Date	:	06.07.2022
Judgment signed by the Presiding Officer on	:	06.07.2022
Judgment Uploaded on	:	06.07.2022