

MHNG110008092022



ORDER BELOW EXHIBIT-20
(Passed on 11.01.2024)

1. This is an application filed by defendant under Order-VII Rule-11 of the Code of Civil Procedure, 1908 for rejection of the plaint. The defendant contended that the plaintiff filed the present suit for declaration and permanent injunction. That the suit filed by plaintiff not tenable in the eyes of law because plaintiff's husband executed will deed in favour of defendant Kh.no.96, Area 1.10 H.R. mauza – Ajani, Tah.-Kuhi, Dist – Nagpur and 1/2 share in Kh.No.156 out of 1.93 H.R. will deed dated 01/04/2019 before his death and already executed will deed in favour of defendant. Therefore no cause of action arises against the defendant to file this suit.

2. The Nilkanth Laxman Thakre was died on 04/08/2019 after his death without mutating the name of legal heir of Nilkanth on 7/12 using 7/12 of dead person executed Sale Deed to third party Vidyaprakash Gangaprasad Pande, Rajkumar Gangaprasad Pande, Pranay Kashinath Bandbuche, Prafulla Kashinath Badbuche on consideration of Rs.16,16,000/- (Sixteen Lakh Sixteen Thousand) without public notice and citation. This execution of Sale Deed of Kh.no.156, Area 1.93 H.R., Mauza – Khalasna, Tah.- Kuhi, Dist- Nagpur in which 1/2 share of Nilkanth Laxman Thakre. This execution of Sale Deed by plaintiff on 16/08/2019 Sale Deed No. 1779 Sub-Registrar Kuhi not binding to the defendant. That defendant challenge the

mutation entry ignoring the will deed filed appeal before S.D.O. Umred where S.D.O. decided the matter in favour of defendant on 07/01/2022 thereby cancel the mutation in the name of plaintiff from record of suit property and on 02/09/2022 defendant mutate her name in revenue record of suit property already bequeathed in the name of defendant after the will deed all the defendant 2 to 5 executed Sale Deed in favour of 4 person that Sale Deed void ab initio when title of property already lost by defendant 1 to 5 that property transferred to the third party without making party to this present suit therefore present suit is liable to be dismissed for non-joinder of party also defendant executed the Sale Deed of Kh.no.156 Mauza – Khalasna on valuable consideration Rs. 16,16,000/- (Sixteen Lakh Sixteen Thousand) where in this property defendant has half share in property Rs. 808,000/- but on whole claim nor half share plaintiff paid court fee and ask for declaration and permanent injunction valued Rs. 1000/- therefore this present suit is liable to be dismissed for insufficient court fee.

3. The suit is not properly valued and no proper court fees has been paid by the plaintiff. That looking to the prayer Clause of the plaint the plaintiff has to pay the court fees on valuation of Sale Deed of Rs. 16,16,000/- (Sixteen Lakh Sixteen Thousand) hence suit is liable to be rejected under order 7 Rule 11 of C.P.C. and the suit is liable to be dismissed. There is no cause of action against defendant to file the suit hence suit is liable to be dismissed and it may be dismissed with heavy costs.

4. It is submitted , the defendant filed the probate application No. 1/2020 before Civil Judge Senior Division Umred against plaintiff No. 1 to 4 and intervener No. 2 to 5 where in the probate application

No.1/2020 at Civil Judge Senior Division Umred as non-applicant No. 6 to 9 on 08/07/2020 application for probate U/s 276 of Indian Succession Act 1925 where plaintiff No.1 to 4 and intervener defendant No. 5 to 8 received notice appeared before this court. The probate of will in favour of defendant for property Khasara No. 96, Area 1.10 H.R., Mauza- Ajani, Tah. - Kuhi, Dist. - Nagpur and 1/2 share of Khasara No. 156, Area 1.93 H.R. , Mauza – Khalasna, Tah.- Kuhi, Dist.- Nagpur. That matter again agitated on some cause of action against defendant before this Hon'ble Court asked for declaration and permanent injunction where the property Khasra No. 156 of mauza Khalasna already sold to intervener defendant 2 to 5 and Khasra No.96 already bequeathed by will in favour of defendant therefore declaration permanent injunction cannot be sought about the property which is already disposed by plaintiff. Therefore this suit apply doctrine of constructive resjudication and liable to be dismissed and set aside status quo order on wrong pleading. That being position in law then in the context of pleading of plaintiff, this suit should not be allowed to proceed ahead and plaint should be rejected with costs, in interest of justice.

5. The application is resisted by the plaintiff overleaf of his say. The application is strongly opposed as the same is not under valuable in the eyes of law. It is denied by the plaintiff that no cause of action arises against the defendant to file this suit. That the plaintiff has already mentioned in the suit that how the cause of action arose against the defendant for filing the present suit. The plaintiff has already joined to the purchaser of agricultural property bearing Kh.no. 156 in this matter and non-joinder of party in the suit is not the ground for rejection of plaint. That the plaintiffs have not challenged the legality and validity

of the sale deed Dt. 16/08/2019, bearing Doct no. 1779/2019 nor they have any objection in respect of that transaction therefore question does not arise to pay court fees on the consideration amount of sale deed. That the plaintiffs have challenged the legality and validity of the will deed Dt.01/04/2019 which is later on registered on 03/03/2020 bearing Doct No. 523/2020 and for that suit is valued Rs. 1000/- and plaintiffs have properly paid court fees of Rs. 200/- as per provisions of law.

6. It is denied by the plaintiff's, that the suit is not properly valued and no proper court fees has been paid by the plaintiff. That the plaintiff's have properly calculated the valuation of the suit as per their prayer clause and paid the court fees on the said valuation therefore provisions of order 7 rule 11 of C.P.C. is not applicable in this matter. The probate application filed by the defendant is not tenable and against the provisions of law. That probate of will is applicable only in metro cities i.e. in Mumbai only and for rest of Maharashtra probate of will is not tenable. That the doctrine of resjudicata is not the ground for rejection of plaint but without applying judicial mind, the defendant falsely filed the present application on the ground which is not cover under provision of order 7 rule 11 of C.P.C. and same are not applicable in the present application therefore application filed by the defendant is liable to reject. Without using judicial brain the defendant with intention to harass to the plaintiff and with intending to kill valuable time of court proceeding filed the present application therefore same is liable to reject with cost of Rs. 50,000/- be impose on the defendant.

7. Heard learned advocate for the plaintiff and defendant. Considering the pleadings, material on record and arguments advanced

at bar, following points arise for my determination and I record my findings thereon, for the reasons discussed herein below.

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the suit appears from the statement in the plaint to be barred by Order-IX, Rule-9 of Code of Civil Procedure and thereby warrant the rejection of plaint vide Order-VII, Rule-11 [d] of the Code of Civil Procedure, 1908 and suit is liable to be dismissed.?	No...
2.	What Order?	As per final order...

REASONS :

AS TO POINT NO.1 AND 2 :

8. I have heard argument of advocate for the plaintiff and defendant. I have also gone through the pleadings of the parties. It is the suit for declaration and for permanent injunction. The objection given by the defendant is of two fold. Firstly – the objection given by the defendant that the plaintiff's husband executed will deed in favour of defendant and as per that deed he has mutated his name on revenue record, hence plaintiff has no cause of action to filed the present suit. It is submitted by the plaintiff that the mental condition of the of deceased Nilkanth was not good due to paralysis struck prior to his death. Therefore it is not possible for the deceased Nilkanth Thakre to

execute will deed in favour of the defendant. alleged will deed dated 01.04.2019 which is absolutely false, fake and fabricated one. Whether said will deed is false, fake and fabricated one or whether it is true and correct, it will be the matter of evidence, which will be adduced in due course. It will be decided as per evidence and the provision of law. According to me it will be not proper to make any comment without recording any evidence so this point at this stage is not be considered.

9. Secondly- the objection raised by advocate for defendant is that the suit has not properly stamped. No cause of action and suit is barred by law of limitation. The alleged sale deed is not binding to the defendant etc. On perusal of the record it shows that the suit is for declaration and permanent injunction. As per her claim plaintiff has paid requisite court fees. Because she has not challenged any deed in the instant suit. At very primary stage it can not be said that any deed alleged by any part in any suit is void, illegal, it required complete evidence. It will not affect any party to go through trial and after adjudication of the suit on merit. I have gone through the pleadings of the plaintiff she has added to the necessary party in the present suit. There is cause of action mentioned into the plaint para 9. I have perused the record of the said suit and provision and the case in hand is squarely fit as per this provision. The defendant has filed this application to prolong the matter. I do not find any reason to hold the said suit is not tenable in the eyes of law with this reason I passed the following order.

ORDER

- [i] The application [Exh. 20] is rejected with cost of Rs.2000/- (two thousand rupees).

[ii] Defendant to pay cost of Rs.2000/- (two thousand rupees) to the plaintiff within one month from the date of this order.

[iii] Defendant to file separate application to sought any relief like set aside Status - Quo order.

Date: 11/01/2024

(M.C. Shaikh)
Civil Judge Junior Division,
Kuhi.

CERTIFICATE

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

Name of the Stenographer : Suresh Shankarrao Koramkar.
Attached to Civil Judge, Jr. Dn.
Kuhi.

....