

R.C.S. No. 34/2021
Vaman Triambak Dokfode & Ors
Versus
Rekha Dnyaneshwar Aher & Ors

ORDER BELOW EXH. 57
(Passed on 09.05.2024)

The defendant No. 3 has filed present application under Order 7 Rule 11 of Code of Civil Procedure, 1908.(hereinafter referred as Code)

2. The defendant No. 3 averred that there is no cause of action for the suit. Therefore suit be dismissed. Plaintiff has sought prayer that, declaration that defendant no. 1 and 2 have no right in the suit property on the basis of compromise deed, sulenama in Spl.C.S. No. 144/1989 dated 29/04/1993 and compromise in Spl. R.D. no. 19/2005 dated 07/01/2005 and relinquishment deed dated 03/09/2016. The said prayer is not within limitation. Also he has sought declaration that plaintiff no. 1 to 10 are the owner of the suit property. The said prayer is also not within limitation.

3. Further it is contended that plaintiff has filed suit praying that sale deed bearing registration no. 3591/2020 executed and according the to it mutation entry 6D no. 49103 is not binding on the share of the plaintiff. The said prayer is to be sought to revenue court. This Court has no jurisdiction to try this suits. Plaintiff has not paid proper Court fee stamp. Therefore the suit is not tenable for non payment of necessary court fees. Therefore, the suit is not tenable. Hence, prayed to reject the plaint.

4. Plaintiff has filed his say at Exhibit 58 and contended that, the application is false and illegal. Plaintiff has not challenged the mutation entry but only prayed that the sale deed is not binding on his share. Plaintiff has paid proper Court fees. Hence prayed to reject the application.

5. Heard both the advocates. Perused the amended plaint. Suit is for declaration. It is contented that suit property was ancestral property of plaintiff and defendant no. 1 and 2. Partition has taken place in RCS. 144/1989. Defendant no. 1 and 2 has executed relinquishment deed bearing no. 2797/2016 on 03/09/2016 in favour of plaintiff no. 1,2, 3 to 8 some are in respect of survey no. 182/1/3. Therefore, defendant no.1 and 2 has no right in the said property. Despite of the said fact, defendant no. 1 has executed sale deed in favour of defendant no. 3. Limitation for declaration respect of sale deed is 3 years from the date of right accrued. The sale deed is executed in the year 2020 and suit is filed in the year 2021. therefore it is within limitation. There is prayer for declaration that the sale- deed executed is not binding on the share of plaintiff. Plaintiff has only prayed that, the sale deed and the mutation entry made upon is not binding on his share. He has not sought cancellation of sale deed. Therefore, the Court fee stamp Rs. 200/- paid by the plaintiff on that is proper. Further, where declaration is sought for ownership there is no limitation. Therefore, it is not barred by law of limitation. Hence, the following order:

ORDER

Application for rejection of plaint is rejected.

Sd/-xxx

Place : Sinnar
Date : 09.05.2024

(K.S. Khandre),
2nd Jt. Civil Judge, Jr. Dvn.,
Sinnar.