

MHOS090004382015



ORDER BELOW EXH. 23

- 1) The present application is filed by the defendant nos. 1 and 2 under Order 7 Rule 11 of the Code of Civil Procedure 1908.
- 2) Perused the application and say.
- 3) It is the contention of the defendants that the suit is based upon false agreement to sell dated 28.03.1969, that the suit is barred by limitation, that no legal heirship certificate is produced and no agreement to sell filed on record. Therefore, the plaintiff does not dispute a cause of action. Hence, prayed to allow the application.
- 4) The plaintiffs have opposed the application by filing say below Exh. 24.
- 5) At the outset, it is well settled that while deciding an application under Order 7, Rule 11 of Civil Procedure Code, 1908, the Court is required to look only to averments made in the plaint and the documents relied upon by the plaintiffs.
- 6) On perusal of the plaint it reveals that the plaintiffs have pleaded the execution of agreement to sell, the circumstances under which the cause of action arose and have sought relief of execution of sale deed. Whether the agreement to sell is genuine or false is a disputed questions of fact, which can be decided only after recording evidence.
- 7) So far as the plea of limitation is concerned, a plaintiff

can be rejected on the basis of statement contained in the plaint. The issue of limitation would require examination of pleading regarding accrual of cause of action & other circumstances. The same involves mixed question of law and fact. Therefore, this point can be decided by framing appropriate issue. The objection regarding non production of heirship certificate is also not a ground for rejection of plaint. So far as, objection regarding non production of agreement to sell is concerned, the record reveals that during the pendency of present application, the plaintiff has produced the said agreement of record.

8) In the backdrop of aforesaid discussion, I am of the view that no sufficient ground made out to reject the plaint as per Order 7, Rule 11 of Civil Procedure Code, 1908. Hence, I pass following Order:

ORDER

- 1) The application is rejected.
- 2) No Order as to costs.
- 3) The suit shall proceed in accordance with law.

Sd/-

Date : 12.08.2026
Place: Kallam

(Smt. Amruta D. Jadhav)
3rd Jt. Civil Judge J.D., Kallam.