

MHPA110008842024**ORDER BELOW EXH.15.**

The defendant nos.1 and 2 have filed present application under Order VII Rule 11 of C.P.C. praying to reject the plaint mainly on the ground of its non existence.

02- The defendants submitted that the suit is in respect of Gut No.254/1 to the extent of 01 H 34 R. The defendants are not the adjacent to the suit property. The suit is vexatious and with intend to misuse the process of law. The plaintiffs' father Bhimrao along with his brothers had filed a suit bearing Reg.C.S.No.152/2012 for recovery of possession alleging the encroachment on the part of present defendant no.1 in respect of Survey No.254/2 to the extent of 30 R land. The said Bhimrao had claimed ownership over Survey No.254/2. On the contrary, the present suit is in respect of Survey No.254/1 and claim of its ownership. Therefore, the suit is contrary to previous suit no.152/2012.

03- Moreover, the Late Bhimrao had filed Writ Petition No.11115/2015 before the Hon'ble High Court, Bench at Aurangabad challenging the regularization of sale-deed in favour of defendant nos.1 and 2. Said Bhimrao died during pendency of writ petition. It was represented by Bhimrao's LR's. It was decided on 05.06.2023 observing that present plaintiffs and defendants are not adjacent land holders. Thus, the writ petition was rejected. Moreover, land Survey No.254/1 has already been acquired and no more exists. Consequently, the suit cannot be proceeded on the assumption that the suit property is in existence. Hence, prayed to reject the plaint.

04- The plaintiffs have strongly objected the application vide their say Exh.26 denying the entire contention. It is the contention of plaintiffs that the plaintiffs are the owners and possessors of the suit property i.e., Survey No.254/1 to the extent of 01 H 34 R. It was allotted to plaintiffs by Government. The defendants are adjoining land holders to suit property from southern side. They have encroached upon 30 R land. In fact, the Reg.C.S.No.152/2012 was dismissed for default. The cause of action defers for present suit and Reg.C.S.No.152/2012. Hence, prayed to reject the application.

05- Heard the Ld. Advocate for plaintiffs. The Ld. Advocate for defendant nos.1 and 2 filed written notes of argument vide Exh.30. I perused the same.

06- Perused the record. The defendants prayed for rejection of plaint on the ground of non existence of suit property and previous litigations. As per ***Order VII Rule 11 of C.P.C.*** a plaint is liable to be rejected in the following cases:

- a) *Where it does not disclose cause of action,*
- b) *Where the relief claimed is under valued,*
- c) *Where the plaintiff fails to supply stamp paper despite directions,*
- d) *Where the suit appears from the statement in the plaint to be barred by any law,*
- e) *Where it is not filed in duplicate,*
- f) *Where the plaintiff fails to comply with the provisions of Rule 9.*

07- In the case in hand, the grounds put-forth by defendants have found no place in the grounds of Order VII Rule 11 of C.P.C. It is pertinent to note that the defendants have contended in respect of Reg.C.S.No.152/2012 and Writ Petition No.11115/2015, however, they failed to the copies of said litigations. Therefore, for want of said litigations the contentions of the defendants cannot be substantiated.

08- Needless to say the existence or non existence of suit property is matter of evidence requiring the adjudication. So it cannot be a ground to reject the plaint forthwith. Accordingly, I hold the application liable to be rejected being devoid of any merit. Hence, I pass the following order.

ORDER

Application at Exh.15 stands rejected.

Date:- 08.10.2024

(**A.R. Sayed**),
Civil Judge, Senior Division,
Gangakhed.