

Order Below Exh. 24 in R.C.S. No. 96/2020

Vikas V/s. Baban

Defendants filed the application for the rejection of the plaint vide Order 7 Rule 11 of the Code of Civil Procedure (Hereinafter referred as the CPC in short).

2. It is the case of defendants that, the plaintiff filed suit for declaration and perpetual injunction. According to defendants the plaintiff being a purchaser of the suit property from the decree holder steps into shoes of decree holder. Therefore, the plaintiff has to obtain possession by way of execution of decree not by institution of separate suit which is barred as per Sec. 47 of the CPC. When the separate suit barred under Sec. 47, plaint should be rejected vide O.7 R.11(d) of the CPC. Hence, prayed for rejection of the plaint.

3. The plaintiff filed his say vide Exh. 28 and resisted the application. According to the plaintiff, provision of Sec. 47 and O.7 R.11 of the CPC are not applicable to present case. Only to prolong proceeding, defendants filed this application. Hence, the application filed by defendants is not maintainable and deserves to be rejected.

4. Read the application and say. Heard the learned advocates of the both parties.

5. The following points arises for determination and I record

my findings alongwith reasons to that as follows;

Sr. No.	Points	Findings
1.	Whether the plaint is liable to be rejected as per O.7 R.11(d) of the CPC ?	No
2.	What order ?	Application is rejected

REASONS

AS TO POINT No.1:-

6. The learned Advocate for defendants submitted that, the suit is barred as per O.7 R.11(d) of the CPC. It is argued that Explanation II of Sec.47 of the CPC is perfectly applicable to the plaintiff, hence, instead of filing seperate suit, the plaintiff has to file execution proceeding and satisfied the decree. The plaintiff has no locus standi to file this suit. Appeal is pending against the decree. The suit is not tenable, therefore, it is necessary to reject the plaint. Learned Acvocate for defendants insist to decide this application before hearing on the application of temporary injuncion, therefore, he relied on Judgment of Hon'ble Supreme Court, in the case of ***R.K. Roja V/s. Rayadu and Another 2016 CJ (SC) 547***, wherein it was held that “Court cannot proceed with trial without disposing of application under O.VII R.11 of the CPC.”

7. Learned advocate for the plaintiff submitted that, sec.47 of the CPC is not efficacious remedy for the plaintiff. Moreover, when the plaintiff purchased the suit property, no appeal pending against decree, therefore, Sec.47 of the CPC is not applicble. The provisions of O.7

R.11(d) of the CPC are applicable when the suit is barred by any of the provision of law. Hence, the application is liable to be rejected.

8. I have minutely perused the citation given by defendants. It was Election petition wherein an application under O.7 R.11 posted for consideration at the time of final hearing. Though, the fact of authority cited by defendants are different from present facts. Present case is not at the stage of trial but as per my view, it would be proper to decide this application before deciding an application of temporary application. To proceed further, I would like to refer relevant provision;

Order 7 Rule 11(d) of CPC states that, the plaint shall be rejected in following cases;

- a) *where it does not disclose a cause of action; or.....*
- d) *where the suit appears from the statement in the plaint to be barred by any law, it shall be rejected.*

9. It is specifically mentioned in aforesaid provision that, the plaint shall be rejected only if it appears from the statement in the plaint to be barred by any law. Even, if the expression from the statement in the plaint is given liberal meaning, the documents filed with the plaint may be looked into, but nothing more. It is settled principle of law that, power of rejection of the plaint should not be executed except in clear case. If, there is any serious question to be decided, it is proper to the Court is to let the matter proceed further and determine it on merit.

10. Upon perusal of plaint, it does not appear that the suit is

barred by any provision of law, therefore, O.7 R.11(d) is not applicable here. So far as the ground specified by defendants, I have gone through Sec.47 of the CPC, which states that (1) *All questions arising between parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by separate suit.* Explanation II of Sec.47 which contemplates that (a) *For the purposes of this section, a purchaser of property at a sale in execution of decree shall be deemed to be a party to the suit in which the decree is passed:* Hence, question arose that whether plaintiff is a party to the suit in which decree was passed.

11. For applicability of Explanation II of sec.47, it is necessary to purchase the suit property at a sale in execution of decree. But, it is not the case of the plaintiff. On perusal of plaint, it reveals that the plaintiff purchased the suit property from decree holder, but there is no pleading as to execution of decree by the decree holder. The words “*at a sale in execution of decree*” itself expressed that sale of the suit property should be in execution of decree. During the course of argument defendants admitted that there is no execution petition filed by the decree holder. Therefore, in present matter this provision is not applicable. Another contention raised by defendants that they preferred an appeal against the decree but, there is no document on record which shows that an appeal is pending at the time of execution of sale deed. Mere pleading is not suffice. Therefore, it also cannot be said that the plaintiff is Lis pendense transferee. Hence, I answer to point No.1 in the negative.

AS TO POINT No.2:-

12. I answered point No.1 in the negative, therefore, it can be said that, the application filed by defendants deserves to be rejected. Hence, in answer to point No.2, I pass following order;

O R D E R

1. The application is rejected.
2. No order as to costs.

Saswad
Date:-21/09/2020

Sd/-XXX
(**Smt. D. M. Patil**)
2nd Jt. Civil Judge Junior Division
Saswad

CERTIFICATE

I affirm that the contents of this P.D.F. file Order is same word for word as per original Order.

Name of Steno : Mr. K. N. Chopade, (Grade 3)

Court Name : Smt. D. M. Patil
C.J.J.D. & J.M.F.C., Saswad.

Date of Order : 21/09/2020

Order signed by presiding officer on : 21/09/2020

Order uploaded on : 15/10/2020