

ORDER BELOW EXH.No.206.

1. This is an application filed by the defendant No.1 to 8 for rejection of plaint under Order-VII Rule-11(a) & (d) of the Civil Procedure Code.
2. The plaintiff has filed his reply vide Exh.No.209 and thereby strongly opposed the application.
3. On going through the application, say thereon, plaint and arguments of both sides, the following points arise for my determination and I have given my findings thereon for the reasons given below.

Sr. No.	POINTS	FINDINGS
1	Whether the plaint is liable to be rejected under Order-VII, Rule-11(a) & (d) of Civil Procedure Code as prayed by the defendants?	...No.
2	What Order?	As per final order application is rejected.

:: REASONS ::

As to Point No.1 :

4. It is the contention of the defendant No.1 to 8 that the suit is abated on the death of plaintiff Jayram Bhalerao. Hence, no cause of action survived to the legal representatives of the deceased Jayram Bhalerao. The original plaintiff Seetabai had executed Will in favour of her brother Jayram Bhalerao on 26-3-1996. Deceased Seetabai had no right to execute Will in favour of Jayram as the properties mentioned in the Will

were not the self acquired properties. The said Will-deed had not been proved. Before that Jayram Bhalerao has been died. Hence he has no right to execute Will in favour of Vaishali Vishwnath Bhalerao on 06-3-2014. As Jayram Bhalerao has died no cause of action survived. The suit has abated on the death of Jayram Bhalerao. Hence, there is bar of Order 22, Rule 1 of the C.P.C. Further the suit is also barred by Section 212 and 213 of the Indian Succession Act as no Probate has been obtained. Hence, prayed that the plaint be rejected.

5. On the other hand, the learned counsel for the plaintiff submitted that the suit is not barred by any law. There is cause of action to the present suit. The cause of action survived even after the death of Jayram Bhalerao. The plaintiff's suit was already decided on 30-6-2000. Appeal No.113/2000 had been preferred against the said Judgment before the Hon'ble District Court, Alibag. The Hon'ble District Court has remanded the matter to this Court by passing order below Exh.No.53 on 21-7-2008. Further after death of Jayram Bhalerao his legal representative has filed application vide Exh.No.167 for bringing her on record. That application has been allowed by this Court. The defendants also filed application vide Exh.No.165 for abatement of this suit on the death of Jayram Govind Bhalerao. However, that application has been rejected by this Court. The defendants had challenged the order below Exh.No.165 and 167 before the Hon'ble District Court, Raigad-Alibag. However, the Hon'ble District Court has dismissed the said Appeal and has confirmed the order of this Court. The Probate is not required to be taken as the properties under the Will are not falling in the Presidency Town, Mumbai. Hence, they prayed that application be rejected.

6. On going through the plaint and documents on record it is seen that the plaintiff Seetabai Narayan Deshmukh has filed the present

suit on 21-12-1995 for partition and separate possession of the suit properties. The said suit had been partly decreed on 30-6-2000. Against the said judgment and decree the defendants had preferred Appeal before the Hon'ble District Court, Raigad-Alibag vide Civil Appeal No.113/2000. As per order passed below Exh.No.53 in that appeal present matter has been remanded to this Court with the directions to give an opportunity to the appellant and the respondents to amend the pleadings in respect of execution of Will only and thereafter to frame the Issues of Will and to give an opportunity to both sides to lead evidence and to dispose of the suit according to the Law.

7. Deceased Seetabai Narayan Deshmukh had executed Will in favour of Jayram Govind Bhalerao. Accordingly after death of Seetabai, Jayram had filed applications at Exh.No.113 and 120 for joining him as plaintiff. Those applications have been allowed. Against those orders the defendants had preferred Writ Petition bearing No.807/2010 before the Hon'ble High Court. The Hon'ble High Court has given liberty to the petitioner Jayram Bhalerao to apply to the Civil Judge in the pending suit for appropriate interim relief. Such application if made shall be considered on its own merit and uninfluenced by the circumstance as such relief has been granted during the pendency of the present proceeding.

8. Further it is also seen from the record that after death of Jayram Bhalerao his legal heirs have been brought on record in view of Will-deed executed by Jayram as per order passed below Exh.No.167. Deceased Jayram Bhalerao died on 10-6-2016. Thereafter on 30-7-2016 his legal representatives have filed application vide Exh.No.167. Therefore, it shows that within the period of 90 days application has been filed on record to bring the legal heirs of the deceased Jayram on record. The suit will abate only when the legal heirs not brought on record within

the statutory period of 90 days. The application preferred by the defendants for abatement of this suit vide Exh.No.165 has been dismissed.

9. The defendants had preferred Civil Misc. Appeal No.58/2017 before the Hon'ble District Judge, Raigad-Alibag against the orders passed below Exh.No.165 and 167. The Hon'ble District Court dismissed the said appeal on 20-12-2018. Hence, it cannot be said that the suit is abated on the death of plaintiff Jayram Bhalerao. Further the matter is remanded to this Court by the Hon'ble District Court to decide the issue regarding execution of Will which is executed by deceased plaintiff Seetabai in favour of Jayram. Deceased Jayram had executed Will in favour of his daughter-in-law on 06-3-2014. However, during pendency of present suit Jayram Bhalerao has died. In view of Will executed by deceased Jayram the right to sue survives to his daughter-in-law.

10. Further as per section 67 r.w. 213 of the Indian Succession Act Probate is required to the Will made within the local jurisdiction of High Courts at Bombay, Calcutta, Madras. In the present matter section 67 r.w. 213 is not applicable to the present case as the disputed Will executed is outside the local limits of Bombay.

11. The learned counsel for the defendants has relied upon the case of "Jailaxmi Janardan Walwalkar Vs. Leelachand Laxmichand reported in "1998)(3) Mh.L.J. 618" wherein the Hon'ble Bombay High Court has held that legal consequences of abatement take place if a party to the suit dies and application for substitution is not made in time. Such legal consequence cannot be set at naught indirectly by invoking provisions of Order 1, Rule 10 or section 151 of the C.P.C. by applying for impleadment of legal representative of the deceased party at any time after the suit has abated and the abatement has not been set aside.

12. In the present case the plaintiff Jayram Bhalerao has died on 10-6-2016. Thereafter within the period of 90 days the legal representative of the deceased Jayram Bhalerao has filed application vide Exh.No.167 on 30-7-2016 and accordingly the legal representatives of the deceased Jayram Bhalerao has been brought on record. Hence, the suit has not been abated. Hence, the question of setting aside abatement order doesn't arise. Hence, ratio laid down in this case is not applicable to the case in hand as facts in both the cases are different. Hence, the present suit is not barred by any law. The cause of action survives to the present plaintiff. Hence, the present suit is maintainable. Hence, the application deserves to be rejected. Accordingly, I answer point No.1 in the negative.

As to Point No.2 :

13. As point No.1 answered in negative the present application needs to be rejected. With this, I proceed to pass the following order.

:: ORDER ::

Application Exh.206 is hereby rejected.

Panvel,
Date : 07/01/2020.

(R. S. Bhakare)
Jt. Civil Judge, S. D. Panvel.