

ORDER BELOW EXH. 14

1] Perused the application and say dated 15-09-2016. Heard both the sides. The defendant has raised objection that it does not disclose the cause of action in the matter as the claim of plaintiff as regards to his alleged ownership is based upon the promise allegedly given by the defendant for executing Release-deed in respect of his share involved in the suit property. However, no document in that regard ever executed. As such, the claim of plaintiff is baseless. In support of the said objection the defendant has relied upon the case law - **N.V Srinivasa Murthy and Ors. V/s. Mariyamma (dead) by proposed LRs. And Ors.[MANU/SC/0406/2005(Soft)]**. It has been held that when the suit is hopelessly barred by law of limitation, the suit should have been dismissed on that ground at the initial stage.

2] If the averments in the plaint are taken into consideration as it is, it would disclose that the plaintiff has claimed his exclusive ownership over the suit property on the ground that his father - deceased Dattatreya has orally partitioned his self-acquired properties among his children during his lifetime and in the said partition, the suit property was allotted to the plaintiff. This fact was well within knowledge of all his remaining children including the defendant. Taking into consideration these material averments, it is clear that the

plaintiff has claimed his ownership with certain specific case for which he will have to be given an opportunity to establish his case. The specific averements in that regard are sufficient to disclose the cause of action to file the present suit.

3] So far as the part of execution of Release-deed from the side of defendant in pursuance of the wish of deceased father is concerned, it is just one of the aspects to be considered while taking into consideration the claim of ownership involved in the matter. Hence, the objection raised by defendant only on that ground cannot be entertained under this limited preliminary inquiry. Likewise, the case law as relied by the defendant is also pertaining to different fact and circumstances and in respect of the matter of delay which is not in issue. Hence, the said case law cannot be made applicable to the case in hand. Consequently, the application will have to be rejected for want of substance. Hence, I pass the following order.

ORDER

The application (Exh. 14) is rejected.

Place : Pali
Date : 19/08/2017

Civil Judge Junior Division, Pali
19/08/2017