

**Regular Civil Suit No.59/2017**

(Laxmi Duttatray Koli V/s.
Sangita Amrutrao Patil etc 1)
CNR :MHSN020002072017

ORDER BELOW EXH.106

(Date - 29/04/2025)

Present application is filed by defendant No.1 under Order VII Rule 11 of the Code of Civil Procedure to reject the plaint.

02. In short, it is contention of defendant No.1 that, present suit is filed by the plaintiff to declare that decree passed in R.C.S. No.145/2015, dated 07/05/2016 is canceled. Considering pleading in the plaint and the reliefs claimed, present suit is not tenable. After recording the evidence and following procedure in the matter decree is passed. Prior to that paper publication was issued. Evidence of Police Station Officer, Police Patil is also recorded. The documents are also produced. Judgment and decree is passed on the merit. Therefore, question of misleading the Court or playing fraud on the Court does not arose.

03. It is further contention of defendant No.1 that, plaintiff is not her mother. She is posing herself as a Laxmibai Koli. So as to grab the property of defendant, the plaintiff has also got prepared the documents regarding the same. The plaintiff has got mutated the property on her name, which was standing in the name of Ganesh, though he was alive. Plaintiff is not concerned with deceased Dattatray and defendant No.1. By

taking disadvantage of the order of temporary injunction, the plaintiff has transferred the property and gained wrongful benefit. It shows ill-intention of the plaintiff. Instead of challenging the decree in Appeal, present suit is filed. Therefore suit is not maintainable. Hence, prayed to reject the plaint.

04. The plaintiff filed say at Exh.108 and opposed the application contending that the application is not filed within limitation. The suit is posted for hearing. Therefore, defendant has no right to file the present application. Defendant No.1 is the daughter of plaintiff. Defendant No.1 filed suit bearing R.C.S. No.145/2015, under Section 108 of the Indian Evidence Act to declare that Laxmibai Koli is unheard since last 7 to 8 years and it be declared that she is dead. Defendant produced false and fabricated evidence and obtained decree in that matter.

05. It is further contention of the plaintiff that, she has mentioned the reasons in para No.5 अ to 5 ज्ञ of the application, how by playing fraud the decree is obtained by defendant No.1. On the basis of that decree, defendant No.1 applied for employment at the place of deceased Ganesh. Present plaintiff was not party to that suit. Therefore, she is not having right to prefer the appeal against the said Judgment and decree. Therefore, present suit is filed. Hence, prayed to reject the application.

06. Heard both the parties. It is argued by Adv. Shri Kore

for defendant No.1 that suit is filed for declaration that decree be canceled, which is passed in R.C.S.No.145/2015. Plaintiff's original name is Ranjana but she is posing herself as Laxmibai Koli. Judgment and Decree is passed after full trial on merit. There is no pleading in the plaint that defendant produced false and fabricated evidence in that matter. The said decree is still in existence. Evidence of Police Officer, Gramsevak and Police Patil is recorded in that matter. Nature of fraud played on the Court is not pleaded. In spite of paper publication nobody, including the plaintiff, has raised any objection in that matter.

07. It is further argued by him that, the plaintiff has not clarified where she was residing during all this period. Even she has not filed any police complaint regarding preparation of false and fabricated documents. Aadhar Card attached with sale-deed dated 23/02/2016 shows that plaintiff mentioned her name as Laxmi Dattatray Kohli and not as Ranjana Koli. But in 7/12 extract and Mutation Entry No.2490, there is no name of Laxmibai Koli, but name of Ranjana is mentioned as Ranjana Dattatray Waghmare. There is no pleading that Ranjana and Laxmibai are one and the same person. It shows that the plaintiff by posing herself as Laxmibai Koli is trying to grab the property of defendant No.1. By taking disadvantage of temporary injunction order the plaintiff has alienated some properties of Laxmibai Koli. The plaintiff is having remedy of appeal. But instead of filing appeal, present suit is filed, which is not tenable. Hence, prayed to reject the plaint.

08. On the contrary, it is argued by Adv. Kavthekar for the plaintiff that R.C.S. No.145/2015 was filed by defendant No.1 for declaration of Civil Death of Laxmibai Koli by suppressing the fact that Laxmibai Koli is alive. Though, Laxmibai Koli was residing at village Khupsingi but paper publication was issued in the news paper of Sangli edition. Therefore, said was not within knowledge of present plaintiff. By producing false and fabricated documents in that matter the decree is obtained.

09. It is further argued by her that, on the complaint of plaintiff, police have conducted the enquiry and submitted report on 04/07/2017 mentioning that Laxmibai Koli resides at village Khupsungi along-with daughter-in-law. She is not absconded. The documents filed on record also shows that plaintiff is residing at village Khupsingi and not at Achkanhalli. The defendant has not challenged the said report. As defendant No.1 deceived the Court and public authority, present suit is filed. Scope of appeal is very limited. On the basis of fraud, suit for declaration is maintainable. Civil Court is having jurisdiction to try the suit. Hence, prayed to reject the application.

10. Upon hearing both the parties and perusing the respective submissions, first of all it is necessary to mention that to decide the application under Order VII Rule 11 of the CPC only the pleading in plaint has to be considered. It is settled law that application under Order VII Rule 11 of the CPC can be filed at any stage of the proceeding. Therefore, though the present application is filed at the stage of hearing, same is maintainable.

11. It is one of the submission on behalf of defendant No.1 that the plaintiff is having right to challenge the judgment and decree passed in R.C.S. No.145/2015 by filing the appeal. But instead of filing the appeal, separate suit is filed which is not maintainable. So far this submission is concerned, it is necessary to mention that no doubt once a decree is passed in the suit, the aggrieved party is having right to challenge it in appeal or by review application. But there is one exception to the said principle. The decree passed in a suit can be challenged by separate suit or in collateral proceeding on the ground of playing fraud on the Court.

12. The Hon'ble Supreme Court in several judgments held that the decree which is obtained by misrepresentation and playing fraud on the Court cannot stand and is nullity in the eye of law. The said decree cannot be kept in existence merely because it is passed by the competent Court of law and is not set aside in appeal. It is also laid down that the person who has obtained decree by playing fraud cannot take fruits of decree.

13. It is also one of the submission on behalf of defendant that there is no pleading about playing fraud on the Court. Therefore, the suit is not maintainable. On perusing the plaint, it appears that in para No.8 of the plaint, it is specifically pleaded by the plaintiff that by filing suit bearing R.C.S. No.145/2015, defendant No.1 has obtained the declaration that plaintiff is dead under Section 108 of the Indian Evidence Act, though the plaintiff was alive. Therefore, there is pleading in the plaint

about the fraud played by defendant No.1 while obtaining the decree in the suit. Whether said contention is correct or not is required to be decided in present matter.

14. Further, whether the plaintiff is Laxmibai Koli or Ranjana Waghmare is a matter of trial. Whether the evidence adduced in previous suit is false or fabricated is also a matter of trial and for that purpose evidence in present matter is necessary. At this stage of the suit on the basis of documentary evidence produced by both the parties it cannot be ascertained whether defendant No.1 had lead false and fabricated evidence in that matter.

15. So far submission of defendant No.1 that, decree ought to have been challanged in appeal and not by way of separate suit is concerned, it is necessary to mention that plaintiff was not party to that proceeding. Therefore, she is not having right to challenge the said decree in appeal. The only remedy available to the plaintiff is to file a separate suit challenging the said decree on the basis of fraud. Therefore, the suit filed on the basis of fraud challenging the decree in R.C.S. No.145/2015 is maintainable.

16. The other contentions raised by both the parties regarding the documents produced on record as well as the evidence produced and recorded in that matter, whether amounts to fraud on the Court, is required to be considered in present matter. As discussed in above paras, separate suit

challenging the decree in previous suit is maintainable. Therefore, the application deserves to be rejected. Hence, I pass the following order.

ORDER

1. Application is rejected.

Sangli
Date: 29/04/2025

(R. P. Kulkarni)
Jt. Civil Judge Sr. Dn., Sangli

CERTIFICATE

I affirm that the contents of this PDF file are same as per original.

Name of Stenographer	: Sou. S. A. Mane (Grade-II)
Name of the Court	: Shri. R. P. Kulkarni Jt. C.J.S.D., Sangli.
Date of decision	: 29/04/2025
Order signed by P.O. on	: 29/04/2025
Order uploaded on	: 29/04/2025