

Order Below Exh. 160 In Reg. Civil Suit No. 278/2015
(Shila @ Chandrashila Patil etc. Vs. Sampat Patil etc.)
(CNR No.MHSN050015592015)

Defendants No. 3 and 4 have filed the present application seeking dismissal of the suit on the ground of its maintainability.

2. Read the application and reply. Heard. The learned advocate appearing for defendant Nos. 3 and 4 submitted that the father of the plaintiff had filed R. D. No. 31/1993 based on the judgment and decree passed in R.C.A. No. 183/1984. The said Darkhast came to be dismissed for default. Thereafter, the plaintiff filed an application before the Collector, Sangli for recovery of possession, which is still pending. In such circumstances, according to the defendants, the present suit is not maintainable. It is further submitted that the plaintiff ought to have filed objections under O. XXI R. 97 read with Section 47 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"). Thus, the defendants have prayed for dismissal of the suit by allowing the present application. In support of his submission he has placed reliance upon following case laws.-

1. Brahmdeo Chaudhary Vs. Rishikesh Jaiswal & another, AIR 1997 SC 856.
2. Nagappa Vs. Dodda Bharamappa & Anothr, AIR 2000 SC 3567(1)

3. As against this, the learned advocate appearing for the plaintiff submitted that defendant Nos. 3 and 4 are the legal heirs of defendant No. 1. In earlier litigation, defendant No. 1 had agreed to

partition as per the order passed in the original suit. However, execution of the said decree has not yet been carried out. Meanwhile, defendant No. 1 alienated some portion of the suit property. Such alienation, according to the plaintiff, adversely affects his rights and interest in the suit property. Therefore, the present suit challenging the alienation at the instance of defendant No. 1 is maintainable. Accordingly, the plaintiff has prayed for rejection of the application. In support of his submission he has placed reliance upon following case laws.-

1. Dhurandhar Singh Vs. Jai Prakash University, 2001 Legal Eye (SC) 347.
2. Vasudev Modi Vs. Rajabhai Rehman, 1970 Legal Eye (SC) 499.
3. Krishna Mahale Vs. Shobha Rao, 1989 LegalEye (SC) 288.
4. Varanasi Murthy Vs. Dasyam Rao, 2007 Legal Eagle (AP) 845.
5. Borusu Kamma, Bullenna, Cultivation Vs. K.D.M.C. Kowur, 2006 Legal Eagle 1188.
6. Basappa Halavalad Vs. Bhimangowda Patil, 1927 Legal Eagle 168.

4. It is evident that Subhash Maruti Patil was the father of plaintiff Nos. 1 to 3. Defendant No. 1 had entered into an agreement, rather a compromise, in R.C.A. No. 183/1984, wherein he admitted the 1/3rd share of Subhash Maruti Patil. However, subsequently, defendant No. 1 resiled from the said compromise and denied the share of Subhash Maruti Patil. Not only this, but after the demise of Subhash Maruti Patil, defendant Nos. 1 to 9 started obstructing the possession of the plaintiffs over the suit property. In

the meantime, defendant No. 1 sold a portion in excess of his share to defendant Nos. 8 and 9 under a registered sale deed bearing No. 2029/2012 dated 20/06/2012. Hence, the plaintiffs have challenged the said sale deed.

5. According to defendant Nos. 3 and 4, the plaintiffs ought to have challenged the sale deed in the earlier Darkhast proceedings instead of filing the present suit, which is untenable. Keeping in view the objection raised by defendant Nos. 3 and 4 in mind, it is necessary to examine O. XXI R. 97 read with Section 47 of the Code of Civil Procedure, 1908. On perusal of the above provisions, it appears that all questions relating to execution, discharge, or satisfaction of a decree must be determined by the executing court and not by a separate suit. The object of these provisions is to prevent multiplicity of proceedings, applying only to the parties to the suit or their representatives. Thus, questions pertaining to execution are to be decided in the execution petition itself.

6. However, in the present case, the plaintiffs have challenged an alienation which took place after dismissal of the said execution petition. The prayer clause of the suit clearly shows that the plaintiffs seek cancellation of the sale deed executed by defendant No. 1 in favour of defendant Nos. 8 and 9. It is not in dispute that Section 52 of the Transfer of Property Act prohibits transfer of property during pendency of a suit affecting the rights of any party to that suit. It is also not in dispute that the plaintiffs herein were not parties to the earlier litigation. In such circumstances, the legal representatives of late Subhash Maruti Patil may maintain a separate suit to protect their possession and rights.

7. According to the plaintiffs, the defendants are obstructing their possession and trying to alienate the suit property. Furthermore, Section 47 of the CPC does not bar a subsequent suit claiming the relief that differs from that of the prior decree. In the earlier litigation, the relief pertained to partition. In the present case, the relief sought is for perpetual injunction and cancellation of an instrument. Prima facie, the reliefs are not identical. On the contrary, the present suit appears to be an assertion of absolute rights over the property. Hence, I have no hesitation in holding that the suit is maintainable. There cannot be a quarrel pertaining to the ratio laid down in the case laws on which defendant Nos. 3 and 4 have placed reliance. However, due to dissimilarity in the facts I am of the humble opinion that the case laws on which defendant Nos. 3 and 4 have placed reliance are not applicable to the present case. Considering the circumstances and the discussion above, I come to the conclusion that the application deserves to be rejected. In the result, I pass the following order.

ORDER

Application is hereby rejected.

Islampur.
Date: 09/02/2026

(Bhagwan M. Karlekar)
Jt. Civil Judge Sr. Dn., Islampur

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