

ORDER BELOW EXH. 61 IN RCS NO.28/2018

This is an application filed by defendant no.1 for rejection of the plaint under order 7 rule 11 of the Code of Civil Procedure.

2- Defendant submitted that present suit is filed for partition and separate possession of the suit property in respect of landed and house property situated at Nagaj and Nimaj. Defendant further submitted that plaintiff has to take Government Valuation while computing valuation of the suit and deposit court fee accordingly. Plaintiff deliberately computed valuation wrongly and not affix the court fee. The valuation of the suit property 1A goes to 57,78,203/- rupees and property 1B goes to 3,33,651/- rupees. Defendant further submitted that plaintiff merely submitted reason that being a woman she has not affixed the court fee. Hence, suit is not tenable. Further there is bar of joinder of necessary parties and cause of action took place in the year 2011 hence, suit is barred by limitation. Hence, prayed for rejection of plaint.

3- Plaintiff submitted her say at Exh.64 and denied contents of application. Plaintiff submitted that plaint cannot be rejected merely on the ground that it is under valued. Further plaintiff submitted that plaintiff being a woman has not affixed the court fee. Further all the heirs of deceased Namdeo are brought on record. Hence, there is no bar of necessary parties. Further plaintiff submitted that she has issued notice on 21.01.2018. Hence, suit is within limitation. Hence, prayed for rejection of application.

4- From the rival contentions of both the parties, following points are arisen for my determination and I have recorded my findings with reasons as below.

Sr. No	POINTS	FINDINGS
1	Whether suit is under valued and liable to be rejected as contemplated under order VII rule 11(b) of Code of Civil Procedure ?In the affirmative.
2	Whether it appears from the statement in the plaint to be barred by any law as contemplated under order VII rule 11(d) of Code of Civil Procedure ?In the negative.
3	What order ?	...As per final order

REASONS

As to point No.1 :-

5- The provisions of Order VII Rule 11 (b)(d) of the Code of Civil Procedure categorically provides for rejection of plaint, where it is under valued and barred by any law respectively .

6- The present suit is filed for partition and separate possession. It is settled principle that while considering the application under order VII Rule 11 of Code of Civil Procedure, the contents of the plaint should be considered. The defence of the defendants should not be looked into.

7- After perusal of plaint it appears that plaintiff mentioned that being woman she is exempted from the court fee. Further after perusal of plaint it appears that plaintiff is claiming partition from her deceased father as properties are ancestral one. Therefore, there is no question of exemption of court fee on the ground of woman. Therefore, the objection of defendant is tenable. Further defendant has stated that Government Valuation of suit property 1A goes to 57,78,203/- rupees and property 1B 3,33,751/- rupees. But, plaintiff has to compute after considering the valuation of suit property and provisions of the law. Further opportunity to compute the suit correctly and deposit court fee accordingly should be given before rejecting the plaint under order VII Rule 11 (b) of Code of Civil Procedure. Therefore, I give my finding in affirmative to point No.1.

As to point No.2 :-

8- Defendant raised objection of limitation. While considering the application under order VII Rule 11 of CPC, the contents of plaint required to be considered. Here in the present case in para-5 of plaint, plaintiff submitted that he has issued notice on 22.01.2018d to the defendants. Therefore, it cannot be said at this juncture that suit is barred by law of limitation. It is mixed question of law and facts. Hence, objection taken by defendant is not tenable . Hence, I give my finding on point no.2 in the negative.

As to point No.3 :-

9- Opportunity to compute suit correctly and deposit court

fee accordingly should be given to plaintiff. Further after perusal of contents of plaint, it does not reveal that there is bar of law of limitation. Further defendant raised objection of non-joinder of necessary parties which is not purview of order VII Rule 11 of Code of Civil Procedure. Hence, application deserves to be partly allowed. In the result, I proceed to pass following order.

ORDER

- 1] The application (Exh.61) is partly allowed.
- 2] Plaintiff is hereby directed to compute the suit correctly and deposit court fee accordingly till next date.
- 3] Costs in main cause.

Date:-17-01-2022

Kvathe-Mahankal.

[Shrinivas A.Kulkarni]
Civil Judge, Junior Division,
Kvathe-Mahankal.