



ORDER BELOW EXH.20 IN R.C.S. 258/2023

(Passed on 28.01.2025)

1. By the present defendants raised objection under order 7 Rule 11 of C.P.C. the defendants challenged the maintainability of the suit on various grounds. Defendant submitted that suit property is self acquired property of Dhanaji Shankar Hogle i.e. deceased husband of defendant no.1. So plaintiff has no right to purchase suit property. Defendant further submitted that, Defendant no.2 has purchased suit property by legal procedure and possession was delivered to defendant no.2. According to section 22 of Hindu succession Act plaintiff is not entitle to the right of Pre-emption. Therefore suit of plaintiff is not maintainable. Hence prayed for rejection of application.

2. Plaintiff filed his say at Exh. 23 and denied the contents of application. Plaintiff submitted that suit property is ancestral and joint family property of plaintiff. Plaintiff is brother of deceased Dhanaji Shankar Hogle. Therefore suit property is ancestral property belonging to father of plaintiff and deceased Dhanaji Shankar Hogle. Property was purchased in the name of deceased Dhanaji Shankar Hogle from joint family income. Plaintiff is co-sharer and joint family property is in possession of them without being partitioned. Hence prayed for rejection of application.

3. Heard both side. Plaintiff argued that defendant without filling written statement on record can't file an application for rejection of plaint In



support of his argument plaintiff relied on the judgment in case of Alpana Gupta through power of attorney holder Vs. APJ Towers Pvt. Ltd. And anr. 2019 (15) SCC 46, wherein Hon'ble Supreme Court held that "the pleas raised by defendants in there application under order 7 rule 11 of C.P.C. ought to be raised in the written statements such pleas do not fall any of the clauses of order 7 rule 11 of code." Plaintiff further argued that he has filed suit for perpetual injunction and for right of preemption. As per the application plea of preemption is not maintainable. However the relief of perpetual injunction can be considered and the same can not be rejected in support of his claim. Plaintiff relied on the judgment in case of Kum. Geetha D/o. Late Krishna and Ors. Vs. Nanjundaswamy and Ors. 2023 AIR (SC) 5516, wherein Hon'ble Supreme Court held that "the plaint as presented must proceed as a whole or can be rejected as a whole but not in part." I have gone through these judgments. The facts and circumstances in above said judgments are different.

4. Defendant argued that suit property is the self acquired property of deceased Dhanaji and plaintiff is not class I heir of deceased Dhanaji. Therefore plaintiff is not entitled to claim right of preemption. In support of his argument defendant relied on the judgment in case of C.S. Ramaswamy Vs. V.K. Senthil and Ors. Civil application no. 500/2022 decided on 30/09/2022, wherein issue was involved whether the suit is barred by law of limitation and on the ground of limitation the plaint sought to be rejected. In such circumstances Hon'ble Supreme Court held that the suits were filed after 10 years from the date of execution of registered sale deed. The plaint was not within limitation and



rejected the plaint under order 7 rule 11 of C.P.C. The facts and circumstances of the case in hand are different. In the present suit the issue of limitation is not under consideration. Therefore the judgment relied by the defendant is not applicable in case in hand with due respect.

5. Perused record. The main issue is as to the right of preemption is maintainable or not. Plaint at Exh. 1 shows that plaintiff has contended that he is being brother of deceased Dhanaji Shankar Hogle and being co-sharer entitled to right of preemption. The notice also prima facie shows same contents. The sale deed produced by plaintiff's at List Exh. 3, prima facie shows that land in R.C.S. No. 214 was purchased by plaintiff, deceased Dhanaji and their Father Shankar separately. Sale deed in favour of deceased Dhanaji prima facie shows the boundaries of property, i.e. towards east land of plaintiff.

6. According to Section 22 of Hindu Succession Act, 1956 for claiming preemption right. It must be immovable property of Hindu intestate. Such interest must devolve upon two or more class – I heirs as per schedule of Act 1956. The plaintiff and defendant must be class-I heir as per the schedule to claim right of preemption. Any one of such class-I heir must propose to transfer his undivided interest in such family. A willing other class-I co heir has a preferential right to purchase share of other co-heir. If a sale offer is not given by co-heir and he transfers his share to stranger class-I has right to file suit for enforcing right of preemption. If a partition of such property has been taken between class-I heirs the right of preemption is not available and it cannot be enforced.



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7. In the present case plaintiff has claimed that suit property is purchased from joint family income in the name of deceased Dhanaji Shankar Hogle i.e. his brother and partition of properties not took place between them. Considering the claim of plaintiff at this primary stage of suit it can not be decided that whether suit property is self acquired property of deceased Dhanaji or ancestral property of plaintiff and deceased Dhanaji. The intrinsic issue involved in the suit which is mixed question of law and fact. it requires detail inquiry. On considering the detail evidence it can be decided. Therefore, in such circumstances application deserves to be rejected. Hence following order;

Order

application rejected.

Vita.
Dt. 28/01/2025

Smt.A.PManav (Smt.A.B.Sontakke)
Civil Judge Jr.Dn., Vita., Dist. Sangli.



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CERTIFICATE

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

Name of Stenographer	:-	D. S. Kadam, Jr. Clerk
Name of the Court	:-	Smt. A.P. Manav (A.B.Sontakke) 2 nd Jt.Civil Judge Jr. Dn., & J.M.F.C. Vita. Tal:-Khanapur.
Date of decision	:-	28.01.2025
Date of Order typed	:-	06.02.2025
Date of Order Corrected	:-	07.02.2025
Order signed by P.O. on	:-	10.02.2025
Order uploaded on	:-	11.02.2025