

ORDER BELOW EXH.38

IN

R.C.S.No. 92 of 2021

(CNR No.MHSO06-000)

1] This is an application to reject the plaint under O-7 , Rule 11 of the Code of Civil Procedure. It is submitted that the previous suit between the parties R.C.S.No.205/2020 is decided on 19.01.2011. The execution is pending on said decree. The appeal filed is dismissed in default on 04.10.2019. In execution possession is also handed over to defendants. Hence, the suit is not maintainable. It is barred by limitation also.

2] The application is challenged as false and not maintainable. It is not within the purview of O-7, Rule 11 of the Code of Civil Procedure. Hence, it be rejected.

3] Perused the record.

4] Heard both the learned advocates for the parties.

5] This is the suit for declaration that proceedings in said R.C.S. No.205/2020 and execution proceeding No.54/2012 are void and not binding on the plaintiffs. In nutshell, it is submitted that despite the death of the father of plaintiffs legal heirs were not brought on the record and suit proceeded further in R.C.S.No.205/2020. Hence, decree passed in it is challenged as void ab inito. Considering the claim in the plaint and prayer, prima facie it cannot be stated that only on perusal of the plaint the suit is barred under O-7, Rule 11 of the Code of Civil Procedure. Both res-judicata as well as limitation are mixed questions of facts and law. Those need to be decided after considering the pleadings of both the parties as well as evidence.

Under O-7, Rule 11 of the Code of Civil procedure only if there is legal bar which is clear from the plaint itself the plaint can be rejected. The defence cannot be considered in this regard. In the present matter it is not the situation that only from reading of the plaint , it appears to be barred by law. Hence, this disputed question needs to be decided on trial and therefore, following order is passed.

ORDER

The application is rejected.

Pandharpur
Date:- 10.08.2022

Civil Judge Senior Division,
Pandharpur

CERTIFICATE

I affirm that, the contents of the this P.D.F file Order/Judgment are same word to word, as per the original order/ judgment

Name of Stenographer : B.R.Kondekar
Court Name : Civil Court Senior Division, Pandharpur
Date : 10-08-2022

Order/Judgment signed
by the Presiding Officer on : 10-08-2022

Order uploaded on : 11-08-2022