

Special Civil Suit No. 361/2022

Gulan Vasan vs. Kamrunisa Vasan
CNR No. MHSO100008212022

ORDER BELOW EXH.26

This is application for rejection of plaint.

2. In short it is application that, the suit is submitted for partition, preferential right and perpetual injunction. The plaintiff and defendants are from Muslim community. So, the plaintiff has to claim his share as per Mohammedan Law. But, he has claimed illegally half share in the suit property. As per mutation entry No. 2111 prima facie it shows that, partition is taken place in the year 1990 and defendant No. 1 and 2 have purchased the suit property, which is mentioned in plaint clause No. 1C and 1E. Therefore, the plaintiff is not entitled to claim partition. The plaintiff has not brought into common *hotchpotch* Gat No. 768 situated at Village Mahalung and other properties. The plaintiff has claimed a relief that sale deed of suit property which is mentioned in plaint clause No. 1C is not binding on his share. But, the plaintiff has not paid the court fees. Hence, the plaint is liable to be rejected. The plaintiff has not valued the suit as per valuation of suit property which are mentioned in plaint clause No. 1E and 1EE. The plaintiff has claimed preferential right relating to properties mentioned in plaint clause No. 1C, on which he has to pay court fees. Therefore, plaint be rejected.

3. The plaintiff has submitted his say to this application below Exh.35 that the plaintiff has claimed a share as per Mohammedan Law. Father of plaintiff expired on 27.08.2020 and thereafter, the suit is submitted for partition and separate possession. There are contents in mutation entry bearing No. 2111 relating to partition in the year 1990. But, it is taken place between father and uncle of plaintiff. The plaintiff has valued the suit as per Bombay Court Fees Act and Suit Valuation Act. Therefore, application may be rejected.
4. I have heard learned advocates of both sides.
5. The suit is for partition and separate possession. The plaintiff has claimed his share as per Mohammedan Law or not, is a matter of merit. That will be decided after evidence of both sides. The plaintiff has not included some properties, as per contention of defendant, in common hotchpotch for partition, but that is not a ground to reject the plaint. That can be curable before framing of issues. The plaintiff is not executant of suit property which is mentioned in plaint clause No. 1C. When he is not executant, then it is not necessary to pay court fees on valuation of property. But, plaintiff has claimed a preferential right, hence he has to pay court fees as per valuation of suit property. The plaintiff has claimed a partition relating to City Survey No. 947/1 and 996 situated at Village Akluj. These suit properties are non

agricultural lands. Therefore, on the valuation of these properties the plaintiff has to pay court fees. Hence, there is no reason to reject the plaint at this stage, because it is necessary to give time to the plaintiff for correction of valuation and payment of court fees. Hence, in the result, I pass the following order :-

ORDER

1. The plaintiff is directed to value the suit, as observed above and to pay court fees on it, on or before 05.06.2023.
2. Furthermore, he is directed to bring all necessary properties into common *hotchpotch* for partition.
3. If the plaintiff failed to pay the court fees within time, then the plaint will be rejected.

Place - Malshiras.
Date - 27/04/2023.

(**U. V. Joshi**)
Civil Judge Senior Division,
Malshiras.