

Order Below Exh. 55.

Defendant no.1 made this application under Order 7 Rule 11(d) of the Code of Civil Procedure praying for rejection of ^{the} plaint. Perused application.

2. Defendant no.1 submitted that, defendant no.5 filed this false suit through his son plaintiff to get money from consideration amount of selling ~~the suit~~ ^{the} property being agricultural land of defendant no.1. The plaintiff is also making false complaints in police station. In fact, there was partition on 23-04-1982 between family members of the plaintiff & defendants. All agricultural lands of defendant's family were standing in name of Sarubai Bhise. She executed Gift deed during 1982 in favour of her children. Since partition jointness of family came to an end and they started residing separately. Their names were mutated on records as per partition & their possession & none raised objection. The suit property was separate property of Sarubai and hence as the suit property was not eligible for partition. Defendant no.1 purchased half portion of the suit property from Sarubai prior to ~~partition~~ ^{the} partition from his earning. After ~~partition~~ ^{the} partition ~~the~~ ^{the} half portion was purchased by defendant no.1 in name of his wife Suman. Defendant no.1 filed R.C.S. No. 558/1991. In that case, defendant no.1 filed written statement on 24/06/1984 and stated that " सदा कामी सदा लो दि. 23/08/92 से बक्षीसप्राप्तमाने बादी, प्रतिवादी क. 9 ने 3

Bahar

यांचेन योग्य वे कायदेशीर असे वादपत्र सादर केले होते, त्यामुळे हल्ली वादीय वादपत्राचा दावा करण्याचा हक्क, अधिकार नाही. तसेच सदरचा दावा द्या स्वरूपात टेनेबल नाही." The plaintiff is claiming right through his father defendant no.5. Hence being son such ~~and~~ statement of defendant no.5 is binding on the plaintiff. Hence suit is barred by O-2 R-2. The suit is false. Hence he prayed for rejection of plaint.

3. The plaintiff objected the ~~order~~^{an} application during argument stating that application is not tenable. There is no such bar. Statement mentioned in app'n is ^{not} applicable to City Surrey property. Hence the plaint can't be rejected.

B. Shau

4. Defendant no.1 relied on Shri. Chand Gupta v/s Gulzar Singh and Anr. AIR 1992 SC 123, in this case Hon'ble Supreme Court held that, "Section 18 of the Evident Act postulates that statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorised by him to make them, are admissions. Equally statement made by a person who has any proprietary or pecuniary interest in the subject matter of the proceedings or persons having derivative interest make statements during the continuance of the interest also are admissions."

5. Also in the Church of Christ Charitable Trust and Educational Charitable Society Vs. M/s. Ponniammam Educational Trust represented by chairperson, SLP (C) No. 30632 of 2011 decided on 3 July 2012 Hon'ble Supreme Court relied on

" A perusal of order VII Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application there under are the averments in the plaint. The trial Court can exercise the power under order VII Rule 11 CPC at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of trial for the purposes of deciding an application under clauses (a) and (d) of Rule 11 of order VII ~~CPC~~ CPC, the averments in the plaint are germane."

Brahma

6. In the abovesaid judgment relied by the defendant no.1, it is also held that, the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. This application for rejection of plaint is in respect of defence and contentions mentioned in written statement of defendant no.1. Thus these contentions as to collusion of plaintiff and defendant no.5 is matter evidence and trial. Further, contention of defendant no.5 in A.C.S. No. 558/1991 cannot be read in isolation, entire case needs to be considered and its relevance in light of evidence of this case needs to be considered. Hence it is a matter of trial and evidence. Also its binding force on right of the plaintiff

is also matter of evidence. The plaintiff is son of defendant no.5. But defendant no.1 has filed only copy of written statement. Plaintiff in that case is not filed. Thus descriptions of suit properties in that case is not shown. Hence mere filing of written statement is not sufficient to show admission. Hence bar under O-2 R-2 is matter of trial & evidence. Statement in the plaint is not showing that suit is barred by law. Hence O-7 R-11(d) is not applicable and plaint cannot be rejected on ground mentioned in written statement and application of defendant no.1. Hence application needs to be rejected. Argument of defendant no.1 is not tenable. Accordingly following order—

Order

1. Application is rejected
2. Costs in cause.

Bhaskar
15-2-2020

(R.S. Dhadake)

2nd Jt. CSD, Barshi.

Date- 15-2-2020

Barshi