

Order Below Exh. No. 22

The present application has been filed by the defendants under Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of plaint.

2. It is the case of the defendant that the plaintiff has incorrectly pleaded in para No.2 of the plaint that between 2010 to 2011 the suit property was partitioned between the plaintiff and defendant. Further, no documentary evidence has been led by the plaintiff in support of the aforesaid plaint. Further it is the case of the defendant that the suit property has been already partitioned in the year 2009. The defendant has relied upon documents filed along with Exh.15/4 in support of his claim. Hence, it is the case of the defendant that the plaint filed by the plaintiff is vexatious. It is the further the case of the defendant that the relief sought by the plaintiff with respect to 10 grant of mandatory injunction directing the defendant to construct 10 feet road is fabricated and the same is not maintainable in law. The plaintiff has not produced any documentary evidence to show that a 10 foot road was in existence in the suit property. Therefore, it is the case of the plaintiff that the plaint filed by the plaintiff is liable to be rejected as the same is barred provisions of Order VII Rule 11(d) of the Code of Civil Procedure, 1908.

3. The plaintiff has filed say to the present application at Exh.25. It is the case of the plaintiff that the present

application filed by the defendant is not maintainable. The fact whether the partition of the suit property took place in the year 2010 to 2011 is not relevant. The present suit has been filed by the plaintiff for removing the obstruction caused by the defendant and seeking mandatory injunction against the defendants for construction of road. Thereafter, the defendants purchase the suit property in the year 2011. The present application is filed by the defendant with a intention to prolong hearing of the case. Hence, the application is liable to be rejected.

4. I have heard the Ld. Advocate for the parties. I have the perused the plaint it is the contention of the Ld. Advocate for the defendant that the plaintiff has incorrectly pleaded that the suit property was partitioned in the year 2010 to 2011 during the life time of the father of the plaintiff and defendant. In support of the aforesaid claim the defendant has filed documents along with list of document at Exh.15/4. It is further the case of the defendant that there was 10 foot road in not existence. Hence, mandatory injunction to the defendant to remove obstruction from the road cannot be granted. It is the case of the defendant that the averments in the plaint are false. It is pertinent to note that it is settled law that while considering application for rejection of plaint under Order VII Rule 11 of Code of Civil Procedure. The Court has to only considered the averments in the plaint. The Court cannot rely upon the documents filed by the defendant for rejecting the

plaint. It is also settled law that the veracity of the averments in the plaint cannot be gone into by the Court, while considering application under Order VII Rule 11 of the Code of Civil Procedure, 1908. If the same are pertaining to factual inquiry requiring detailed evidence to be led by the parties. In the present case, I am of the considered view that the allegation raised by the defendant that the plaintiff has falsely pleaded that partition took place in the year 2010 to 2011 cannot be considered at this stage because the same will require detailed evidence to be led by the parties. The same can only be considered at the stage of the evidence. The Court at this stage cannot rely upon the documents filed by the defendant for rejecting the plaint. The scope of inquiry while considering application under Order VII Rule 11 of the Code of Civil Procedure is only restricted to averments in the plaint the court cannot look into defence or the documents filed by the defendants. Similarly, the question as to whether 10 foot road was in existence at the time of partition between the plaintiff and the defendant is also a question of fact which requires detailed inquiry in light of evidence led by the parties and the same cannot be considered at this stage. Perusal of the plaint would reveal that the description of the suit property more particularly mentioned in paragraphs 1b of the plaint would reveal that there is a mentioned of survey no. 143/10. The objection raised by the defendants in the present application is that the plaintiff has not filed 7/12 extract of the suit property

along with the plaint. It is pertinent to note that the plaintiff has filed the 7/12 extract survey no.143 along with list of documents at Exh.41. The contention of the Ld. Advocate of the defendant that the plaint be rejected because the plaintiff has not filed 7/12 extract of the suit property and therefore, the plaint does not disclose cause of action cannot be accepted for the simple reason that the scope of inquiry while dealing with application under Order VII Rule 11 of Code of Civil Procedure is limited and the Court has to come to the conclusion from the perusal of the averment in the plaint whether the plaint discloses of cause of action or not. Non filing of the documents in support of the averments in the plaint is a question which has to be dealt at the stage of evidence. Therefore, I am of the considered view that the plaint cannot be rejected, on the ground that the 7/12 extract of the suit property has not been filed. This is a question which requires detailed inquiry and can only be considered at the time of evidence. Therefore, the present application is liable to be rejected. In view of the above facts and circumstances, I pass the following order :

Order.

1. Application is liable to be rejected.
2. No order as to costs.

Date – 20/06/2025.

(N.P. Baji)
2nd Joint Civil Judge Junior
Division, Mohol.