



ORDER BELOW EXH.102 IN RCS NO.9/2012

The present application is filed by the defendants for rejection of plaint under Order VII Rule 11(a) of the Code of Civil Procedure, 1908.

2. Heard learned advocate for Defendant No.23 Mr. T.M.Mane and learned advocate for the plaintiff Mr. I.G.Jamadar. After hearing arguments advanced by learned advocate of both the parties and after going through the record, following points arise for my consideration and I record my finding thereon for the reasons mentioned thereunder:-

Sr. No.	POINTS	FINDINGS
1)	Whether the plaint is liable to be rejected under Order VII Rule 11(a) of the Code of Civil Procedure, 1908?	No
2)	What order?	The application is rejected.

REASONS

3. The learned advocate for the defendant argued that the

present defendant has purchased the suit property bearing Gat No.547A on 16/11/2010 for the consideration of Rs.13,10,000/-. He has taken search report of 30 years of the suit property before purchasing it. The possession of the suit property is handed over to him on the date of sale deed. The revenue entries has been made vide Mutation Entry No.2783. The present plaintiff filed this suit without any cause of action. The said sale deed is executed by taking permission from Sub-Divisional Officer, Satara. The plaintiff is not in possession of the suit property since 1963. The plaintiff wanted to purchase the suit property. However, the original owner did not accept the offer of the plaintiff. Therefore, he has filed the present false and frivolous suit to trouble defendant No.23 to 25. The properties were already partitioned before the Tahasildar on 28/10/2010 vide S.R.No.69/2010. Accordingly, Mutation Entry No.2774 is entered into revenue record. The plaintiff can not seek relief of partition of the suit properties which are already partitioned on 28/10/2010. Hence, he prayed that application be allowed and the plaint be rejected.

4. On the other hand, learned advocate for the plaintiff argued that the present application is false and illegal. The suit properties are ancestral property of the plaintiff and the defendants. The plaintiff is cultivating the suit properties. The old survey number of the suit property was Survey No.16 and on 30/08/1964, Rama Kundalik Chavan and Ganpati Kesu Chavan got 32 M certificate after payment of Rs. 264.61/-. Rama and Ganpati became owner of 8 Ane share each. The names of defendant No.1 to 16 as legal heirs of deceased Rama and legal heirs of Bhau were entered into the revenue record. The names of Shripati, Anandarao and Bapu as a legal heirs of Rama were entered

illegally. Shripati sold the suit property by taking undue advantage of the said wrong entry. The partition has been effected between the legal heirs of Rama only. Ganpati Chavan and Dhondibai Narayan Chavan was not part of the said partition. The said partition was effected behind their back. The plaintiff has a cause of action in the present suit. Hence, he prayed that application be rejected.

5. The learned advocate for the plaintiff placed his reliance the authority of *the Hon'ble Supreme Court* in the case of *Srihari Hanumandas Totala Vs. Hemant Vithal Kamat & Ors., Civil Appeal No.4665/2021*. In the said authority, the issue before Hon'ble Supreme Court was that the plaint was rejected under Order VII Rule 11(d) of the Code of Civil Procedure. In the instant case, the defendant is seeking relief of rejection of plaint under Order VII Rule 11(a) of the Code of Civil Procedure. Therefore, with respect of the authority of cited supra, I am of opinion that it is not applicable to the case in hand.

AS TO POINT NO.1:-

6. It is settled position of law that while deciding an application under Order VII Rule 11 of the Code of Civil procedure the plaint has to be read in whole along with the documents accompanied with it. It is irrelevant what the defendant is alleging and the Court can not look into the documents filed by the defendants. The plaintiff has filed the present suit for partition, separate possession and mesne profit. The issue raised by defendant no.23 regarding cause of action. It is settled position of law that the cause of action means bundle of facts. It is mixed question of fact and law which can not be decided at the threshold. The defence

of the defendant is that there was earlier partition which has to be proved by adducing evidence. It is to be brought on record that the said partition was effected by metes and bounds. *Per contra*, the plaintiff contended that his predecessor-in-title was not part of the said partition. In such circumstances, the plaint can not be rejected. The power to reject the plaint is drastic in nature and it curtail the right of the party at the very beginning. Thus, I am of opinion that the issue of cause of action can be decided only after evidence led by the parties and the plaint is not liable to be rejected under Order VII Rule 11(a) of the Code of Civil Procedure. Hence, I answer point no.1 in the negative.

AS TO POINT NO.2:-

7. In view of my finding as to point no.1, I hold that the application is liable to be rejected. The suit is at preliminary stage and thus, I am not inclined to impose costs on the defendants. Hence, in answer to point no.2, I pass the following order :-

ORDER

(1) The application (Exh.102) is rejected.

(2) No order as to costs.

Date: 11/10/2024
Koregaon.

(A. A. Pacharne)
Jt. Civil Judge Junior Division,
Koregaon.