

ORDER BELOW EXH. 24 IN R.C.S. NO.29/2019

(Janardhan Panjabrao Dandale Vs. Laxman Bhanya Ingle)

1. The defendant has moved the present application under Order VII Rule 11 of Code of Civil Procedure seeking a relief for rejection of plaint.

2. He has contended that, the present suit is for declaration of ownership and injunction. Further, the plaintiff has not pleaded his clear right to sue and therefore, plaint has to be rejected. It is also contended that, proper cause of action is not given, by way of clever drafting created a illusion without any basis in the month of August 2019 in order to bring suit in limitation. It is also contended that, there is no cause of action for filing the suit, suit is valued as per section 6 (v) (j) of Maharashtra Court Fee Act and said provision is not applicable. It is also contended that, the plaintiff has not paid proper court fee. The plaintiff has sought declaration of ownership and therefore, he ought to have valued the suit as per market value of the property. Considering all above aspects, defendant prayed for rejection of plaint.

3. The plaintiff has filed say below Exh.25 and denied the entire contentions. Per contra, contended that, the suit property is owned by the plaintiff as per will deed of Vyankatrao. He has further contended that, prior to death of Vyankatrao, the suit property was in cultivation of plaintiff. Further, the plaintiff has paid proper court fee. Further, the present application is only moved with intent to prolong the matter. Considering all above aspects plaintiff prayed for rejection of application.

4. Perused the record. Heard the learned advocate for the parties. The present suit is for declaration of ownership and perpetual injunction. Further, after going through the pleadings of plaint, it reveals

that, the plaintiff has come with the case that, deceased Vyankatrao has purchased the suit property from Gulab Ingle and thereafter, Vyankatrao by way of will deed has bequeath the suit property in his favour and so he is in possession of the suit property. The defendant has filed his W.S. below Exh.11. The defendant by way of present application is contending that, the suit has no cause of action, it is not within limitation, proper court fee is not paid. It is settled that plaint cannot be rejected on the basis of allegation made by the defendant in his written statement/application. Further, whether the plaint discloses cause of action is a question of fact and it has to be gathered on the basis of plaint averments. So, after going through the entire pleadings of the plaintiff it cannot be said that there is no cause of action to file the suit.

5. The defendant had also raised ground regarding limitation. The issue of limitation is a mixed question of fact and law and it cannot be decided while considering application under order 7 rule 11. So, after going through the grounds raised by the defendant it seems that all the grounds are factual one and can be considered only after evidence of the parties at this juncture only the averments made in the plaint has to be seen. Further, the plaintiff is claiming ownership on the basis of will deed and he has paid court fee on the basis of assessment as suit property is agricultural land. Though for a while it is assumed that, proper court fee is not paid and in this situation the deficit court fee can be recovered at any moment of time. So, considering the contentions of plaintiff, nature of dispute I hold that the grounds raised by the defendant cannot be considered at this juncture.

6. So, considering all above aspect I hold that the present application is devoid of merits and hence liable to be rejected. So, I proceed to pass the following order.

ORDER

1. Application stands rejected.
2. No order as to costs.

Date:- 05/02/2024.

sd/-
(V.S. Wagh)
Civil Judge, J.D., Karanja (Gha.)
Dist. Wardha.