

R.C.S. No. 29/2020
Rukhminabai .Vs. Parashram + 3
CNR No. MHWS02000140-2020

ORDER BELOW EXH. 37.

Defendant No. 1 preferred this application under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure. Defendant No. 1 has prayed for rejection of the plaint. According to defendant No. 1, plaint does not disclose the cause of action. This court has no jurisdiction to try and entertain the suit. Plaintiff has nowhere pleaded that he is the owner of the disputed property. So also, defendant No. 1 alleged that one R.C.S. No. 74/2006 was already filed by the plaintiff before C.J.J.D., Malegaon and it was dismissed on 18/01/2016. On all these counts, defendant No. 1 is seeking to reject the plaint.

2. Per contra, plaintiff resisted the application by filing say at Exh. 39.

3. Heard both sides.

4. So far as the contention of defendant No. 1 that there is no cause of action to file this suit is concerned, plaintiff has specifically stated in para 8 of the plaint that cause of action to file the suit arose when he came to the knowledge of the National Highway Acquisition Proceeding No. 161/15/47/2016-17, thereafter on 14/03/2019 and 15/03/2019.

5. So far as the objection of defendant No. 1 on the ground of lack of jurisdiction is concerned, the suit is for declaration of 1/8th share in the compensation amount on the ground of ownership, which is the sole jurisdiction of Civil Court. Another objection on the ground that the objections which were raised before defendant No. 2 were rejected is a matter of fact to be decided on merit. It is stated by the defendant No. 1 that R.C.S. No. 74/2006 was pending before the C.J.J.D. Malegaon and it is dismissed on 18/01/2016 is concerned, there is no specific contention as to which relief was claimed by the plaintiff in that suit, etc. In this respect, Adv. Shri. Beriya for plaintiff argued that, that suit was filed for partition and it was dismissed in default. That suit was not decided on merit.

6. Thus, it appears that the contention in the application does not come within the ambit of order VII Rule 11 of the Code of Civil Procedure. The plaint allegations are germane for Order VII Rule 11 of the Code of Civil Procedure. Hence, following order.

ORDER

Application is rejected.

Date:- 21/12/2021.

2nd Jt. Civil Judge (Sr.Dn.),
Washim.

CERTIFICATE

I affirm that the contents of this PDF file Order are same word to word, as per original Order.

- 1) Name of Stenographer :- D. V. Daware, Clerk-Cum-Stenographer
- 2) Name of Court :- 2nd Jt. Civil Judge (S.D.), Washim.
- 3) Date of order :- 21.12.2021
- 4) Order signed by the
presiding officer on :- 21.12.2021
- 5) Order uploaded on :- 22.12.2021