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| MHWS070015372021<br> |  | R.C.S.44/2021<br>Chhaya duragkar and others Vs.<br>Wasudev and others |
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**ORDER BELOW EXH. 9**

This is the application of defendant no.15 under Order VII Rule 11 of Code of Civil Procedure, 1908 for rejection of the plaint.

2] It is contended by the defendant no.15 that the suit property is legally purchased by him from defendant no.1 on 29.06.2020 for the consideration of Rs.8,50,000/- and since then the suit property is in possession of the defendant no.15. It is further contended that the possession of the suit property was handed over to the defendant no.15 by the court in execution proceeding R.D.No.01/2014 after the full satisfaction of the execution. This execution proceeding was the result of R.C.S No.43/1993 decided on 28.09.2000. After that first appeal and the second appeal was preferred. It is contended that this fact has been concealed by the plaintiff and the present suit is preferred on same issue which was finally decided by the court in earlier proceeding. Hence, the present suit is barred by the principle of Res judicata. Thus, prayed for the rejection of the plaint.

3] Per contra, the application is strongly resisted by the plaintiff contending that false application is filed. He has filed the suit for declaration Partition and mandatory injunction and all other reliefs are related to it. The defendant on the basis of hypothesis filed the false application. Thus, prayed for the rejection of the application.

4] Considering the rival pleadings of the parties, following points arise for my determination. I have given findings thereon for the reasons stated thereunder.

| <u>Sr.No.</u> | <u>POINTS</u>                                | <u>FINDINGS</u>         |
|---------------|----------------------------------------------|-------------------------|
| 1)            | Whether the plaint is liable to be rejected? | No                      |
| 2)            | What Order?                                  | Application is rejected |

## **REASONS**

### **AS TO POINTS NO. 1 AND 2 :-**

5] I heard learned counsel for the defendant no.15 Shri. J. M.Khan and Shri. V. N. Dhage appearing for the plaintiff. Upon hearing both the parties, on perusing the pleading in the plaint, first it is necessary to look into the provision of Order 7 Rule 11 of the Code.

*“11. Rejection of plaint.—The plaint shall be rejected in the following cases—*

*(a) where it does not disclose a cause of action;*

*(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*

*(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*

*(d) where the suit appears from the statement in the plaint to be barred by any law;*

*(e) where it is not filed in duplicate;*

*(f) where the plaintiff fails to comply with the provisions of Rule 9.*

*Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”*

6] Before going to the merit of the case, it is necessary to mention here that the prayer of the defendant under Order VII Rule 11 is having very limited scope. It is well settled law that while deciding the application Under Order VII Rule 11 the Court has to look into plaint only. The averment in the written statement as well as documents filed subsequently by the defendant cannot be looked into.

7] Taking clue from above settled principle of law, this court is deciding the present application. On perusal of the plaint it reveals that filing of earlier suit has not been mentioned. It is specifically pleaded that the plaintiff got knowledge about the Will Deed and hence he rushed to challenge the said Will Deed. As already stated while deciding and application under Order 7 Rule 11 C.P.C, the court is only concerned with averments in the plaint alone. Neither the defence nor the defendant's document can be looked into. Under such circumstances, whether the present suit is barred by the law of limitation or of the Res Judicata has to be decided only at the time of trial letting oral and documentary evidence and cannot decide at this stage. Similar issue has been even elaborated by the Hon'ble Supreme Court in the case of **Vaish Aggarwal Panchayat Vs. Inder Kumar and Others** 2015 AIR SC 3357.

8] Considering all the aspects of the matter in the light of the provision under Order VII Rule 11, and the law discussed by the Hon'ble Supreme Court in the matter supra, I am of the considered view that the reasons mentioned in the application for the rejection of the plaint, do not come under the preview of Order VII Rule 11. Hence, I am not inclined to reject the plaint. All the contentious issues would have to be gone into during the course of trial. Therefore, I express no opinion on merits and consequently the application is liable to be rejected. Hence, I answer point No. 1 in negative and in answer to point no 2 following order is passed.

**ORDER**

- 1) Application is rejected.
- 2) Costs in main cause.

Date : 11/09/2023  
Karanja Lad.

( Smt. S.N.Pund)  
Jt. Civil Judge Junior Division,  
Karanja Lad