

MHYA210010882020

R.C.S.30/2020
Kamina +1-Vs.Suman+16**ORDER BELOW EXH.18**

Defendant no.1 to 7 made the application for rejection of plaint as provided under Order VII Rule 11 of the Code of Civil Procedure, 1908. (in short the 'Code').

2. Perused the application, say and the record. Heard the learned Advocate Shri A.E.Joshi, for the defendants and the learned Advocate Ku.P.C.Shende, for the plaintiffs.

3. The defendants have submitted that the plaintiffs claimed the relief of partition. The husband of plaintiff no.1 and father of plaintiff no.2 namely Yadav, died in the year 2000 and the suit is instituted in the year 2020 i.e. on laps of 20 years. Thereby, they claimed the suit to be barred by limitation. They have further contended that the plaintiff made the contradictory statements as to nature of suit property. At one instance, the plaintiff pleaded the suit property to be self earned property of late Narayan Parkhi and by the other pleading the plaintiffs have claimed the right of inheritance. Further, they have averred the facts as to the facts of maintaining deceased Yadav by his maternal uncle and got properties of his maternal uncle and claimed the bar to the suit by the principle of estoppel. The defendants alleged that the suit does not disclose the cause of action. The suit is not properly valued. Thereby, on the ground of limitation, lack of cause of action, under valuation, principle of estoppel, the defendants have contended that the plaint is liable to be rejected, in view of Order VII Rule 11 of the Code.

4. On behalf of the plaintiffs, the application strongly opposed. According to them, the suit is properly valued, sufficient court fees have been paid. They have undertaken to pay if so concluded by the Court to be deficient.

5. The defendants have contended that the plaintiffs made the contradictory pleadings as to the nature of suit property i.e. self earned property or ancestral property. The defendants seem to be misconceived of the pleading. The plaintiffs have contended that the suit property was the self earned property of the common ancestor namely Narayan Parkhi. There is no dispute that Narayan Parkhi died. On the death of Narayan Parkhi, the property naturally converted into the ancestral property of the heirs. Therefore, the claim of inheritance has been made by the plaintiffs. Therefore, there is no contrary pleading which seems to be made.

6. Further, the defendants submitted the theory pleaded in the written statement that the deceased Yadav Parkhi renounced the relation with his brother and was residing with his maternal uncle Mama Thakur. He had benefited with the

properties left by Mama Thakur. Thereby, the defendants have alleged the existence of principle of estoppel.

7. The Honorable Supreme Court, in the case of **Srihari Hanumandas Totala vs. Hemant Vitthal Kamat and Ors.** [(2021) 9 SSC 99], observed that the application of rejection of plaint must be decided within four corners of the plaint. In view of the principle settled in the cases of **Kamala Vs KT Eshwara Sa** [(2008) 12 SCC 661], **Church of Christ Charitable Trust and Educational Charitable Society Vs Ponniamman Educational Trust** [(2012) 8 SCC 706] and **Soumitra Kumar Sen Vs Shyamal Kumar Sen** [(2018) 5 SCC 644], the Honorable Apex Court ruled that while deciding the merit of the application of the rejection of plaint, in view of Order VII Rule 11(d) of the Code of Civil Procedure,1908, only the averments in the plaint have to be referred to and the defence in the suit must not be considered.

8. The defendants have raised the ground of principle of estoppel for rejection of plaint. The said objections is based upon the defence pleaded by them in the suit. Further, the adjudication of the principle of estoppel needs the appreciations of the proved facts. Therefore, in view of the ratio laid down the the Supra, the defence cannot be considered for supporting the ground to the rejection of plaint. Therefore, the ground of principle of estoppel is not a proper ground for rejection of plaint.

9. The defendants have also alleged the ground of lack of cause of action. They have alleged that the plaintiffs have failed to disclose the cause of action to institute the suit. The Honorable Supreme Court, in the case of **Shakti Bhog Food Industries Ltd., vs. The Central Bank of India and Anr** [Civil Appeal No.2514 of 2020 dated 05.06.2020], observed that it is the bounden duty of the Court to examine the plaint as whole and not selected averments therein. In the case of, **Biswanath Banik Vs Sulanga Bose** [2022 Live Law (SC) 280], the Honorable Supreme Court has held that the Court has to consider and read the averments in the plaint as a whole. The rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure,1908, by reading only few lines and passages of the plaint and ignoring the other relevant parts of the plaint is impermissible.

10. In view of the observations in the Supra, the entire contents of the plaint has to be perused to gather the plea of cause of action. By the statement in the plaint, it discloses that they are entitled for the share in the capacity of heir of deceased Yadav Parkhi. The brothers of Yadav illegally disposed Yadav Parkhi and his family members. The suit property never partition. Their shares are existing in the suit property. The plaintiffs made the oral, vis-a-vis, written (notice dated 03.01.2020), claim for partition against the brother of Yadav. However, they declined. By such act of denying, the suit has been instituted. The statement made in the plaint clearly demonstrate the cause of action for the claim of partition and the other reliefs. Therefore, I do not convince that the cause of action is not discloses in the plaint. The objection raised by the defendants in this regards is liable to be rejected.

11. Further, the defendants have alleged that Yadav Narayan Parkhi died on 14.04.2000 and the suit is filed on elapse of 20 years. Thereby, the defendants claimed the relief of partition is barred by limitation. In view of the observation made by the Honorable Bombay High Court, in the case of, Subhash Mukundrao Deshmukh .vs. Prakash Mukundrao Deshmukh and Ors. [Civil Revision application no.45 of 2021, dated 18.07.2022], observed that the cause of action for the suit of partition is of recurring and continuous until the jointness continue. In view of the plaint, it is not the contention that the suit property is partitioned ever. Therefore, the joint nature of the suit property is subsisted till today. Therefore, in view of the observation made by the Honorable Bombay High Court in the Supra, until the partition of the suit property, the limitation would not be reckoned. As claim in the plaint, the plaintiffs have issued the notice dated 03.01.2020, for which the defendants did not reply and by implication of refusal, the plaintiffs have claimed the relief of partition and it is seems to be within due limitation.

12. Lastly, the defendants claimed the suit to be under valued and the court fees are not paid as per rules. However, the defendants have failed to explain how the suit is under valued. They have alleged that the plaintiffs have made the 1/6 and 1/7 share in the pleading and prayer differently. The claiming share does not affects the root of the claim of the plaintiffs. The share should be decided as the parties entitled thereto and even the party claimed less or more share, it is not disentitled them which they entitled by law. At the most, they may compel to pay additional court fees with reference to such additional right provided thereto. Moreover, under valuation or in deficit court fees is not ground for rejection of plaint, unless it is directed by the Court to comply for the same. Therefore, the ground of under valuation or the deficit court fees, the plaint is not deserves to be rejected.

13. The defendants relied upon by the observation made by the Honorable Apex Court, in the case of, **M.N.Aryamurthi & Onr. Vs. M.L. Subbaraya Setty** by his legal representatives and Others [AIR 1972 Supreme Court 1279], the facts in the Supra, does not applicable to the present application as not concerned with the rejection of plaint.

14. The defendants further relied upon the observation made by the Honorable Gujarat High Court, in the case of, Sitaben Vs. Bhanabhai Madaribhai Patel [AIR 2002 Gujarat 376], it is observed that the femal who is not the coparcener is not entitled to claim the partition. Plaintiff no.2 is the daughter of deceased Yadav Parkhi. In view of the amendment in Section 6 of the Hindu Succession Act, 2005, the daughter i.e. plaintiff no.2 is declared to be coparcener and having equal right as the son have in the right of succession. Therefore, the daughter of the coparcener is one of the plaintiff, which entitled to claim partition. Therefore, the observation in the Supra does not applicable.

15. The facts involve in the relied case law of Tamralipta Co-operative **Spinning Mills Ltd and Anr. .vs. Smt.Seetadevi Jagdishprasad Chandak & Anr.** [(2019) 2 ALL M.R. 704], are concerned with the jurisdictional issue relating to West Bangal Co-operative Societies Act, 2006, are different from the present facts of the application. Hence, distinguished.

16. In the case of Prakashji Goal & Anr.vs. Sayed Ayaz Ali S/o.Makdoom Ali & Ors [(2019) 2 ALL MR 907], the Honorable Bombay High Court, held that if the plaint is affected with legal disability, the plaintiff could not be allowed to cure such defect. However, no such issue is involve in the application. Hence, the observations does not applicable.

17. As discussed above, the objections raised by the defendants in support of rejection of plaint by the reasons of limitation, want of disclosing cause of action, principle of estoppel, counter statements or under valuation are not tenable in the eyes of law and liable to be rejected. Thereby, the application deserves to be dismissed. Hence, I pass following order-

ORDER

1. The application Exh.18 is dismissed.
2. The application is disposed of, accordingly.

Place: Wani.
Date: 22.02.2023

(Sudhir M.Bomidwar),
Civil Judge, (Jr.Dn.), Wani,