

Special Civil Suit No.257/2016

Order below Exhibit-47

1. This is an application under Order-7, Rule-11 of the Code of Civil Procedure, 1908 filed by the defendants No.4 vide Exh.47 for rejection of the plaint on the grounds mentioned in the applications. The plaintiffs have submitted their reply vide Exh.49 and against the reply of the plaintiffs, defendant has submitted his affidavit in rejoinder vide Exh.55.
2. The Learned Advocate for the defendant no.4 has submitted his written argument vide Exh.56 and ld. adv. for the plaintiff has submitted his written argument vide Exh.57. Both parties have argued as per their application and reply.
3. At the time of deciding application under O.7 Rule 11, it is necessary to see legal position involved in this suit. It is well settled law that only the plaint is required to be seen at the time of deciding an application for rejection of plaint and the defense taken by the defendants in the

written statement are not to be considered at the time of rejecting or refusing to reject the plaint. It is also well settled law that if looking to the plaint, it appears that the suit of the plaintiff is patently barred by any law then it can be rejected at any stage of the suit.

4. So, in view of such legal position, and arguments of both parties here in the present case, to see the plaint, the present suit is filed by the plaintiffs for partition of ancestral property and permanent injunction.

The defendant no.4 has filed present application under O.7 Rule 11 by mentioning different types of ground. The defendant no.4 has raised plea that plaintiff has not paid proper court fee and due to deficiency of court fee present suit is required to be rejected under O.7 Rule 11(b) of CPC. In view of the above mentioned fact to see the fact of the plaint, it is transpires that plaintiff has filed present suit against the defendant no.1 to 3 and thereafter during the pendency of the suit the defendant no.3 has sold out the suit property to the defendant no.4 therefore,

plaintiffs have filed application vide Exh.27 to join the defendant no.4 as a party to the suit and necessary amendment in pleading has been carried out therefore, defendant no.4 has raised above mentioned plea.

In view of the arguments advanced by the defendant no.4 the relief prayed against the defendant no.4 is nature of declaratory relief and no court fee is required at this juncture and plea taken by defendant no.4 with regard to deficiency in court fee is not tenable.

By filing present application, defendant no.4 has also raised question that suit of plaintiff is barred by jurisdiction because valuation of suit property is more than Rs.10,00,000/- therefore, suit of the plaintiff is required to be rejected. In view of the above mentioned argument, to see the fact of plaint suit valuation of Rs.16,25,300/- is categorically mentioned in plaint and present suit is registered as a special suit therefore, argument of defendant no.4 is not tenable.

By filing present application under O.7 Rule 11, defendant no.4 has raised question that after passing 30 years to attend the

majority, plaintiff has filed present suit for claiming his right in the suit property therefore, suit of the plaintiff is barred by O.7 Rule 11(d) of CPC. In view of the above mentioned arguments of the defendant no.4 to see the fact of para-4 of the plaint, plaintiff has categorically mentioned that by emotional blackmailing to defendant no.1, on the basis of gift deed, defendant no.3 has entered only his name in records of society and when such fact came into the knowledge of plaintiff, plaintiff has filed present suit. Therefore, question of limitation is became mixed question of law and fact and without taking evidence, it can not be decided at this juncture.

By filing present application under O.7 Rule 11, defendant no.4 has raised plea that plaintiff has not mentioned clear cause of action for filing present suit therefore, present suit of the plaintiff is required to be rejected under O.7 Rule 11(A) of CPC. In view of the above mentioned argument to see the fact of para-12 of plaint, plaintiff has mentioned fact of cause of action therefore, plea taken by defendant no.4 with regard to cause of

action is not tenable.

By filing present application defendant no.4 has raised plea that plaintiff has not produced duplicate copy of the plaint at the time of filing present suit therefore, it is required to be rejected under 0.7 Rule 11(e) of CPC. In view of the above mentioned fact to see the provision of 0.4 Rule 1 of CPC, it is categorically mentioned that every suit shall be instituted by presenting a (plaint in duplicate to the court) or such officer as it appoints in this behalf. Therefore, in view of the above mentioned provision at the time of filing present suit plaint in duplicate must have been produced before the officer as it appoints in this behalf and extra copy of plaint (duplicate) is also available in record. Therefore, contention raised by the defendant no.4 is not tenable.

By filing present application defendant no.4 taken plea that plaintiff has stated fact that the suit property has been transferred but plaintiff has not joined the Gunatit Co.Op.Hous.Soc.Ltd. as a necessary party therefore, present suit of plaintiff is barred by non-joinder of party

and it should be required to be rejected. In view of the above mentioned argument to see the provision of O.7 Rule 11(a) to (f) of CPC, the contention of "non-joinder of party" is not mentioned as a reason to rejection of plaint. Therefore, contention raised by defendant no.4 is not tenable.

5. Hence, in view of the above discussion and reasons, I hereby pass the following order in the interest of justice.

O R D E R

The applications vide Exh.47 for rejection of Plaint is hereby rejected.

There shall be no order as to cost.

Pronounced in open court on 23rd March, 2022.

Date :23.03.2022
Place: Ahmedabad

(Ashadullakhan Rahimkhan Ghorl)
UIC No.GJ00998
5th Addl. Sr.Civil Judge,
Ahmedabad (Rural), at Mirzapur
Ahmedabad