

T.S. - 22 / 2012

Order No. 42  
dated 19.09.2016

Today is fixed for hearing of two petitions; one is under Order 26 Rule 4A of C.P.C. another is under Order 7 rule 11 of CPC.

Both the parties have filed their respective haziras.

The plaintiff by filing an application prayed that the petition Order 26 Rule 4 of C.P.C. should be heard after passing of order upon the petition filed under Order 7 rule 11 of CPC by the defendant.

Heard. Considered.

Prayer is allowed.

Now the petition under order 7 rule 11 of CPC is taken up for hearing.

By filing the instant petition under order 7 rule 11 of CPC the petitioner/defendant No.1 stated that the instant suit is liable to be not maintainable as per section 11 of the CPC. The petitioner further stated that the plaint does not disclose any cause of action and so the instant suit is barred by limitation.

On the other hand the plaintiffs by filing WO dated 28.01.16 vehemently oppose the petition of the defendant No. 1. The ld. advocate for the plaintiff submitted that this court vide order No.14 dated 05-01-13 already rejected a petition of the defendant No. 1 filed by him upon the same ground. But the defendant No. 1 instead of challenging the said order before the upper forum filed this instant petition. Hence the instant petition is not maintainable. He further submitted that the instant petition is filed only to delaying the proceeding of the suit.

On careful perusal of the case record it appears that this court has already by its order No. 14 dated 15-01-13 rejected the petition for rejection of plaint filed by the defendant no. 1 upon the ground that suit is not maintainable as per Section 11 of CPC. in my judicial opinion whether the suit does or does not disclose the cause of action is a matter of trial and evidence. It is the well settled principle of law that question of resjudicata is a mixed question of law and fact and therefore cannot be adjudicated without trial and evidence of the suit. Moreover this is not a court of revision, hence the instant suit is liable to be rejected. It also appears that the defendant No. 1 filed this instant petition only to delay the proceeding of the suit hence I am of the view to rejecting the instant petition with cost.

Hence it is,  
Order

That the instant petition is hereby considered and rejected with a cost of Rs.

100/- payable to the plaintiff.

Fix                    for hearing of petition under Order 26 rule 4A.