

MHWS080016072022

ORDER ON EXH. 1 IN REFERENCE OF EXH.22
IN R.C.S. No. 112/2022

Defendants seek rejection of plaint vide Order 7 Rule 11 read with section 151 of the Civil Procedure Code on the ground that plaint is not disclosing cause of action and it is barred by law.

2] According to defendant no. 03, he has filed suit before Civil Judge Senior Division, Washim vide R.C.S. No. 110/2022 in between parties Vinod Vrs. Indirabai and others for declaration and permanent injunction regarding house property of village Wanoja Tq. Risod Dist. Washim. The said suit filed on 06/05/2022 in that suit present plaintiff appeared and filed her written statement. Thereafter, with malafide intention plaintiff have filed present suit. The age of plaintiff is near about 67 years and above. On 16/12/2005 mother of plaintiff namely Anusayabai Vithoba Kankal, present plaintiff Indirabai Vithoba Kankal had executed relinquished deed of gut no. 208, 15 and 16 of village Wannoja, Tq. Risod, Dist. Washim in favour of Kisan Vithoba Kankal and Prakash Vithoba Kankal. Kisan Vithoba Kankal was a brother of present plaintiff and father of defendant no.02 to 05 and defendant no. 01 is a widow of said Kisan Vithoba Kankal. The Prakash Vithoba Kankal is a party in present suit.

3] The plaintiff had already relinquished her rights on 16/12/2005, therefore she has no any right to filed suit against the defendants. After the executed relinquished deed in favour of Kisan

Vithoba Kankal and Prakash Vithoba Kankal revenue authority had taken mutation entry in favour of Kisan Vithoba Kankal and Prakash Vithoba Kankal bearing mutation entry no. 615 on 03/02/2006 and said mutation entry still have not challenged by plaintiff.

4] The suit property of gut no.19 of village Wanoja, Tq. Risod, Dist. Washim and property of gut no.200 of village Wanoja Tq. Risod Dist. Washim are self acquired properties of defendant no. 01 to 05 who had purchased by the father of defendant no. 02 to 05 and husband of defendant no.01 namely Kisan Vithoba Kankal, therefore plaintiff have not concern in above properties.

5] As per stated above plaintiff have executed relinquished deed on 16/12/2005 of gut no. 208, 15 and 16 of village Wanoja Tq. Risod Dist. Washim and still plaintiff of salient. Therefore, as per Limitation Act present suit is not within limitation. Hence suit of plaintiff kindly be rejected with heavy cost because there is no cause of action arose to file this suit and without cause of action. Hence prayed for rejection of suit.

6] On the overleaf of this application plaintiff has given say and opposed application. The R.C.S. No. 110/2022 filed before Civil Judge Senior Division is in respect of land. The present suit is filed for partition and separate possession of property. Therefore there is no concern of the present suit with R.C.S No. 110/2022. The cause of action in present suit is different. The suit property in present suit is ancestral. Plaintiff prayed for rejection of this application.

7] Heard Ld. Advocates, P.C. Jumde for plaintiff. In spite of

opportunity defendant has not argued.

8] The defendant seek rejection of plaint on ground of limitation and cause of action. According to defendant the plaint needs to be rejected because the suit is not within limitation and there is no cause of action in plaint and therefore civil court can not decide the suit. Foremost objection of the defendants is bar of jurisdiction vis-a-vis relief claimed by the plaintiff.

9] From plaint it is clear that, the plaintiff seeks partition and separate possession. The suit properties are :

- A. gut no. 200, 3.23 H.R., 1.64 Lr, share 0.50 H.R.
- B. gut no. 208, 1.25 H.R, 2.40 Lr, share full,
- C. gut no. 19, 11.39 H.R., 2.69 Lr, share 0.82 H.R.

10] The suit properties are originally ancestral property of plaintiff and defendants. The defendants are trying to alienate suit property without consent of the plaintiff. Therefore suit property is not in the hand of defendants. Defendants having no right to alienate the ancestral property of plaintiff and defendants behind back of plaintiff.

11] Defendant no.1 to 3 has filed written statement cum reply vide Exh.13. Defendant no.4 and 5 has filed written statement cum reply vide Exh. 23.

12] So far as instant application is concerned the defendant seeks rejection of plaint vide Order 7 Rule 11 (a) and (d) of the Civil Procedure Code. So far as jurisdiction of court is concerned the

plaint clearly shows that according to defendant there is no cause of action.

14] Ld. advocate for plaintiff argued that the suit is within limitation and cause of action mentioned in plaint.

15] Here it is necessary to point out the relevant provision of Code of Civil Procedure. Considering the point of jurisdiction of civil court it is necessary to see section 09 of Code of Civil Procedure. It is concerning with jurisdiction of civil court. Jurisdiction means power of the court to hear and decide the case.

16] Section 9 of Code of Civil Procedure provides as follows :
Section 9 Courts to try all civil suits unless barred : The courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation (I) A suit in which the right to property or to an office is contested is suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to the religious rites or ceremonies.

Explanation (II) For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation (I) or whether or not such office is attached to a particular place.

17] Order 07, Rule 11 of Code of Civil Procedure provides :
Order 07, Rule 11 Rejection of plaint : The plaint shall be rejected in the following cases : -

- (a) Where it does not disclose a cause of action ;
- (b) -----
- (c) -----
- (d) Where the suit appears from the statement in the
plaint to be barred by any law.
- (e) -----
- (f) -----

18] Upon close scrutiny of plaint, it is seen that plaintiff have mentioned in the plaint that cause of action arose on 15/09/2022. Therefore, it can not be said that the plaint does not disclose a cause of action. It is clear that, at the time of filing of suit there is cause of action exist. It is true that cause of action is nothing but bundle of facts which gives the plaintiff the right to sue.

19] It is well preposition of law that while ascertaining cause of action it is necessary to have meaningful reading of the plaint. Rule of pleading postulates that a plaint must contain material facts. When the plaint read as a whole does not disclose material facts giving rise to cause of action which can be entertain by Civil Court, it may be rejected in terms of Order VII Rule 11 of the Code. Said preposition of law has not been disputed by either party. In case in hand, present plaintiff come with case that suit property is ancestral property plaintiff and defendants. According to plaintiff defendants are trying to alienate suit property without consent of plaintiff. The suit properties are undivided family property and suit property are cultivating by defendants and possession over the said property of defendants. Plaintiff is a member of undivided property and having

equal share in suit property.

20] It can not be disputed that for claiming relief of partition, limitation is not provided Limitation Act, 1963. A party who does not want to keep it's share jointly or his intention of severance is sufficient cause to institute suit for partition. After having meaningful reading of the plaint it can be inferred that plaintiff has contended that she is having share in the suit property. Other co-shares are trying to alienate suit property. Therefore, she do not want to keep suit property jointly. Pleading is disclosing that plaintiff has filed suit for partition as he do not want to keep suit property jointly with other co-owners. In sum, pleading is disclosing cause of action to institute present suit and therefore, it can not be inferred that there was no cause of action or plaint is not disclosing cause of action. It is necessary to mention that plaint is a bundle of facts and after meaningful reading of plaint it can only inferred that whether suit is beyond limitation or not. In the case in hand, plaint is disclosing that cause of action arose on 15/09/2022. Several times plaintiff have made request to the defendants for partition and separate possession of suit property but defendant have not heard. On 15/09/2022 requested for partition but denied by defendants. Hence, plaint is not disclosing that the suit is barred by law of limitation.

22] As stated earlier; plaint is disclosing the cause of action. For the institution of suit of partition, intention of severance is sufficient.

23] In these circumstances, the suit is within limitation and

there exist cause of action or not need to be considered or determined after full fledged trial or evidence placed on record. Furthermore, the merits and demerits of the matter can not be gone into at this stage. So limitation and cause of action exist or not are essential facts and it requires evidence and full fledged trial of suit. Without full fledged trial the limitation and cause of action can not be considered at this stage, particularly, in preview of Order 07 Rule 11 (a) (d) of C.P.C. Several other factual aspects are need to be considered, same can be done at the time of full fledged trial only. In my opinion ground taken by defendant are not of much importance and this ground may be taken into account on merit after full fledged trial and after recording evidence.

24] Thus in view of the matter I am of the opinion that the plaint of plaintiff can not be rejected at this juncture. For the purpose of finding of cause of action leading of evidence is necessary. Hence, considering all above facts and circumstances of the case, Considering all above discussion, I am of the opinion that the application of defendant needs to be rejected. Hence, I pass following order.

ORDER

1. Application is rejected.
2. Costs in cause.

Sd/-

(Smt. P. M. Kamble)

Date: 05/12/2024.

2nd Jt. Civil Judge, Jr. Dn., Risod.

Certificate

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

Name of Stenographer	:-	Prashant K. More, (Grade-III)
Court	:-	2 nd Jt. C.J.J.D. & J.M.F.C., Risod.
Date	:-	05/12/2024
Judgment/Order signed by the Presiding Officer	:-	05/12/2024
Judgment/Order uploaded on	:-	07/12/2024