

OS 91/2023

ORDER ON IA NO. 6

When the matter was posted for passing order on IA No. 1, on 02.07.2024, the counsel for the plaintiff got advanced the matter seeking permission to advance the reply argument on IA No. 1 and at that time, the counsel for D.3 to 5 filed this application U/o 7 rule 11 R/w sec. 151 of CPC praying to reject the plaint.

In the affidavit annexed to the application, the D.3 stated that by way of reply the plaintiff admitted she is not in possession of any portion of the suit schedule properties for last 30 years and suppressing the said fact, the plaintiff filed this suit without any cause of action and prays to reject the application.

The plaintiff filed objections contending that the application is

not maintainable. The plaintiff filed this suit for the relief of Partition and Separate Possession stating that the suit schedule properties joint family properties and ancestral properties and some of the properties were purchased by her father. Only to drag on the matter present false application is filed to harass the plaintiff as well. Colluding with the revenue officials the defendants have got mutated the revenue records of the suit schedule properties in their names only excluding the plaintiff herein. The question of limitation is a mixed law and facts and that cannot be decided by way of present application as it needs the trial and prayed to dismiss the application.

The points that arise for consideration are

1) Whether the Defendants No. 3 to 5 made out sufficient grounds that their no cause of action this

suit and as such the plaint is liable to be rejected?

2) What order?

Heard. Perused the records. My answers to the above points are,

Point No.1: in the Negative

Point No.2: as per final order for the following,

REASONS.

Point No. 1. On perusal of the reasons assigned in the affidavit annexed to the application, the D.3 stated that since the plaintiff by way of reply notice admitted that she is not in possession of any portion of the suit schedule properties for last 30 years. The application is silent as to how the suit is barred by limitation. However, the plaintiff filed objections under the misconception that the defendant No.3 to 5 filed this application contending that the suit is barred by limitation. It is well settled law that no limitation is prescribed for

maintaining the suit for partition. So far as the possession of plaintiff over the suit schedule property is concerned, it is also well settled law that in respect of joint family properties and the ancestral properties, the possession of one family member is possession of all family members. The possession one family members cannot be considered adverse to possession of other family members. Wherefore, non possession of the plaintiff over the suit schedule property will not give any rights to the defendants claiming for rejection of plaint in a suit for Partition and Separate Possession. Accordingly said contention is hereby over ruled.

The defendant No. 3 to 5 have maintained present suit stating that there is no cause of action to this suit. Admittedly cause of action is a bundle of facts and said fact will be considered having read out entire plaint awarements. The plaintiff at plaint clearly pleaded

about her existence of right as well as when she came to know about the registered sale deed 02.09.1997. Admittedly cause of action is also mixed question of law and facts and said fact cannot be decided by way of present application and it needs the trial.

In view of above observations, this court is of the considered that the defendant no. 3 to 5 not made out any grounds for rejection of plaint.

Accordingly this point is answered in the negative.

POINT No. 2 In view of forgoing reasons, I proceed to pass the following,

ORDER

IA No. 6 filed U/o 7 rule 11 R/w 151 of CPC by defendants No. 3 to 5 is hereby rejected.

Call on for order on IA No. 1 by 28.11.2024.

Sd/-

Sr. C. J. and JMFC, Cng.,