

MHAU020016682022

RCS No. 240/2022

Mohammed Hussain Mohammed
Ismail

Vs

Noorjahan Begum Mohammed
Ismail & Ors.**ORDER BELOW EXH. 21**

Defendant Nos. 1 to 3 have filed application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of plaint on ground that, plaint is barred by law.

2. It is contended by defendant Nos. 1 to 3 that, plaintiff has filed suit for simplicitor perpetual injunction, is not maintainable because defendants are co-owner of suit property, therefore, only suit for simplicitor injunction against co-owner is not maintainable. Therefore, suit of plaintiff is not maintainable and barred by law. Hence, prayed for rejection of the application.

3. Plaintiffs filed say to this application and contended that application filed under what provision of Order 7 Rule 11 of CPC not mentioned i.e. whether under a, b, c or d. Plaintiff wants to protect his possession so he filed simplicitor injunction suit which is maintainable. Defendants illegally and without following due procedure of law trying to sell and dispossess the plaintiff. Plaintiff is residing at Pune and by taking disadvantage of that without partition and identification of property, the defendants trying to sell and dispossess the plaintiff property and issue No. 4 is also framed for same. Hence present

application of defendants is filed in very casual manner which is not maintainable. Hence, prayed for rejection of application of defendants.

4. From perusal of application and say, following issues arises for my determination-

Sr No.	Point	Findings
1.	Whether plaint is liable for rejection ?	...No
2.	What order?	Application is rejected.

REASONS

As to Point No.1 & 2 :-

05. First it is necessary to see Order 7 Rule 11 of Civil Procedure Code the plaint shall be rejected in the following cases: -

11. Rejection of plaint—The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

06. Plaintiff has filed suit for simplicitor injunction against defendants. Defendants are relative of plaintiff and suit property is ancestral property of plaintiff and defendants. Defendants have not stated any clause under which they are seeking rejection of plaint. However, they have contended that plaintiff and defendants are co-owner and therefore, suit for injunction against co-owner is not maintainable.

07. It is settled law that Co-owner or Co-sharer cannot file suit against co-owner or co-sharer for injunction. Because, possession of one co-owner and co-sharer is considered as possession of another co-sharer or co-owner. However, this law is not applicable where act of other co-owner is amounting to ouster of co-owner and excluding co-owner from joint possession. No doubt in Muslim law co-owner has right to sell his undivided share in the estate to which he has succeeded as an heir, however that does not mean that co-owner can obstruct or disturb possession of another co-owner. In ***Tikam Chand Lunia Vs Rahim Khan Isak Khan AIR 1971 MP 23*** the Hon'ble Court has held that, Purchaser of property from co-owner can file suit and get possession of share, if such course does not work injustice to the right of other co-owner. Therefore, the Hon'ble Apex Court also recognized that, co-owner has right that, his possession should not be disturbed and co-owner can sell only his share and not share of another co-owner.

08. In *Bachan Singh vs Swaran Singh* (2000) 126 PLR 416, the Punjab and Haryana High Court (Division Bench) held thus: (i) a co-owner who is not in possession of any part of the property is not entitled to seek an injunction against another co-owner who has been in exclusive possession of the common property unless any act of the person in possession of the property amounts to ouster, prejudicial or adverse to the interest of co-owner out of possession.

(ii) Mere making of construction or improvement of, in the common property does not amount to ouster.

(iii) If by the act of the co-owner in possession the value or utility of the property is diminished, then a co-owner out of possession can certainly seek an injunction to prevent the diminution of the value and utility of the property.

(iv) If the acts of the co-owner in possession are detrimental to the interest of other co-owners, a co-owner out of possession can seek an injunction to prevent such act which, is detrimental to his interest. In all other cases, the remedy of the co-owner out of possession of the property is to seek partition, but not an injunction restraining the co-owner in possession from doing any act in exercise of his right to every inch of it which he is doing as a co-owner.

09. Therefore, from the above case law it is clear that, co-owner can file suit for injunction against another co-owner. In present case plaintiff is in possession of suit property. Defendants are also in possession of suit property. Defendant not stated in which category suit

of plaintiff as co-owner come and how it is barred by law. Plaintiff has right to prove that how defendants obstructed his possession and how defendants did act which is detrimental to the interest of plaintiff. Also, Plaintiff not seeking injunction for exclusive possession over suit property. Therefore, suit of plaintiff is not barred by law that co-owner cannot file suit against other co-owner for injunction. Also if plaintiff thinks that, he want to add prayed of partition he can do so by amendment. Therefore, suit of plaintiff is not barred by any law. Hence, I answered point No. 1 in negative and in answer of point No. 2 I pass following order-

ORDER

1. Application of defendants under Order 7 Rule 11 of the Code of Civil Procedure is rejected.
2. Cost in cause.

Sd/-

Aurangabad

(Smt. S. S. Ghodke)

Date – 03.01.2024

**22nd Jt. Civil Judge Junior Division,
Aurangabad.**

C E R T I F I C A T E

I affirm that the contents of this P.D.F file Order are same, word to word, as per the original Order.

Name of the stenographer : Pankaj Anil Ghule,
Court : 22nd Jt. Civil Judge (Jr.Dn.),
Aurangabad.
Dated : 03.01.2024
Order signed by the Presiding
Officer on : 03.01.2024
Order uploaded on : 09.01.2024