

ORDER BELOW EXH. 16 IN Spl CS No.13 of 2023

MHTH020002012023	<u>Spl.C.S.No.13/2023</u>
	Sunil Mohandas Jagtani Vs Savita Mohandas Jagtani

ORDER BELOW EXH.16

1. The instant application is being filed by defendant for rejection of the plaint as per Order VII Rule 11 of the Code of Civil Procedure, 1908. (In short CPC).

2. Facts giving rise to the application in nutshell are as under;

Suit is filed for declaration and injunction. The plaint does not contain value of the subject matter for the purpose of jurisdiction and court fees. The plaintiff has neither mentioned the value of the suit, nor paid the requisite court fees thereon. Mother was house wife and she had no source of income, so no property was belonged by her. There was meeting between the plaintiff and the defendant in September 2022 and it was informed that the plaintiff was not having any right in the suit properties. The plaintiff suppressed the Will Deed intentionally. Deceased father of the defendant executed the registered Will Deed dtd.05.04.2019 and thereby bequeathed all the properties in favour of the defendant. She had looked after her father. After demise of father, the defendant became absolute owner of the suit properties. The plaintiff is using the court machinery. This court has no jurisdiction. No cause of action arose to file the suit and therefore, the suit is not maintainable. This court has no jurisdiction. The suit can not be based on intestate succession in view of the last will. Lastly, the defendant has prayed to reject the plaint. Application is supported with an affidavit.

The plaintiff strongly refuted the contents of the application by filing the reply (Exhibit 20) on inter-alia grounds contending that the application itself is not maintainable. The point of maintainability of the suit can be decided at the time of final adjudication and therefore, the instant application is liable to be rejected. The application is filed to protract the hearing on interim application. The plaintiff has not raised a single legal ground contemplated under Order VII Rule 11 of the CPC. The plaintiff has valued the suit properly for the purpose of court fees and the jurisdiction. This court has jurisdiction to try and decide the suit. The fact of the Will Deed can not be considered at this juncture. Lastly, he has prayed to reject the application.

4. Heard Ld. Advocates for respective parties at considerable length. Perused the pleadings in the plaint.

5. On hearing and on perusal of the contents of plaint, following points arise for my determination and I record my findings thereon for the reasons stated below:

Sr.No.	Points	Findings.
1]	Whether the plaint is liable to be rejected being barred by law?	... No.
2]	What order?	...Application rejected.

REASONS

Point no.1:-

6. Ld. Advocate for the defendant has vehemently submitted the plaintiff has not mentioned the correct valuation of the suit properties. He nor paid the requisite court fees. The cause of action never occurred. The plaintiff is well aware of the genuine Will Deed, although he has filed false and frivolous suit. The plaintiff suppressed

the Will Deed intentionally. Deceased father of the defendant executed the registered Will Deed dated 05.04.2019 and thereby bequeathed all the properties in favour of the defendant. She had looked after her father. After demise of father, the defendant became absolute owner of the suit properties. The plaintiff is using the court machinery. This court has no jurisdiction. This is non testamentary suit. Let the probate be decided, which the plaintiff is contesting. Thus, the application needs to be allowed and plaint be rejected.

7. Per contra, Ld. Advocate for the plaintiff vehemently submits that the defendant has not specifically mentioned the correct provision as regards the court fees. Facts of the case can not be considered at this juncture. The defendant is not the supreme authority. The defendant can not rely on the notice as argued by the Ld. Advocate for the defendant. He has placed reliance on following citations;

***Srihari Hanumandas Totala Vs. Hemant Vithal Kamat & Ors.*¹**

Wherein Hon'ble Apex Court laid down guiding principles in para no.20 as under;

- i. To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;*
- ii. The defense made by the defendant in the suit must not be considered while deciding the merits of the application;*
- iii. To determine whether a suit is barred by res judicata, it is necessary that i) the previous suit is decided, ii) the issues in the subsequent suit were directly and substantially in issue in the former suit, iii) the former suit was between the same parties or parties through who they can litigating under the same title; and*
- iv. That these issues were adjudicated and finally decided by a court competent to try the subsequent suit;*
- v. Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the previous suit, such a plea will, be beyond the scope of the Order VII Rule (d) where only the statements in the plaint will have to be perused.*

¹ (2021)9 SCC 99 (Equi: 2021 Bom.C.R. 474 (SC))

2008(3) Bom. C.R. 276***Nari Shringar Big Bazar & Anr. Vs Pantoaloon Retailing (India) Ltd.***

Hon'ble Bombay High Court held that the legislature does not add Rule 3 clearly indicates that it never intended that the plaint should be rejected for non compliance of Rule 3. Order

I have taken into consideration the arguments advanced by rival parties. In order to ascertain legal position, I would like to first go through the provisions of **Order VII Rule 11 of CPC**, which read as under;

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.

[(e) Where it is not filed in duplicate;]

[(f) Where the plaintiff fails to comply with the provisions of Rule 9.]

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp paper shall not be extended unless the Court, for the reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

8. Law regarding rejection of plaint is no more *Res integra*.

Hon'ble Apex Court settled the legal position in catena of judgments.

In the case of ***Srihari Hanumandas Totala Vs. Hemant Vithal Kamat & Ors.***

Wherein Hon'ble Apex Court held that, Order VII Rule 11 (d) of CPC clearly provides that the plaint shall be rejected "where the suit appears from **the statement in the plaint** to be barred by any law". Hence, in order to decide whether the suit is barred by any law? it is the statement in the plaint which will have to be construed. The Court while deciding such an application must have due only to the statements in the plaint. Whether the suit is barred by any law? must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the written statement in the case. I would like to refer one recent citation as under;

***Sri Biswanath Banik & Anr.Vs. Smt. Sulanga Bose & Ors.*²**

Wherein Hon'ble Apex Court held that, while considering an application under Order VII Rule 11 of CPC, the Court has to go through the entire plaint averments and cannot reject the plaint by reading only few lines/passages and ignoring the other relevant parts of the plaint. Only in a case where on the face of it, it is seen that the suit is barred limitation, then and then only a plaint can be rejected the plaint cannot be rejected partially. (Para 7, 7.1. 7.4)

9. In view of the Judgment of Hon'ble Apex Court in the case of ***Sri Biswanath Banik & Anr.Vs. Smt. Sulanga Bose & Ors (supra)*** while considering an application under Order VII Rule 11 of CPC, the Court has to go through the entire plaint averments and cannot reject the plaint by reading only few lines/passages and ignoring the other relevant parts of the plaint. Further, in view of the Judgment in the case of ***Srihari Hanumandas Totala Vs. Hemant Vithal Kamat & Ors.(supra)***, it is held that the Court while deciding such an application, must have due regard only to the statements in the plaint. ***Whether the suit is barred by any law? must be determined from the statements in the plaint and it is not open to decide the issue on the***

² 2022 LiveLaw (SC) 280

basis of any other material including the written statement in the case. Thus, the ratio laid down in supra citations are helpful to the plaintiff. In view of the guidelines laid down in supra citations, it is incumbent on the part of this Court to take into consideration statements made in the plaint only and shall not take into consideration the other elements such as documents produced by the defendant and the plea raised in the W.S.

10. Let us analysis the facts in the plaint along with arguments advanced by Ld. Counsel for defendant. On plain reading of the contents of plaint, which can be said to be statements made in the plaint, it reveals that plaintiff has specifically mentioned the cause of action arose on 10.02.2019 when mother died intestate and father died on 03.01.2020. The plaintiff has also mentioned that the cause of action arose on 04.03.2020 when the defendant denied the right of the plaintiff. It is well settled that the cause of action is bundle of facts. The plaintiff has specifically mentioned the cause of action and therefore the plaint discloses the cause of action. Thus, the ingredients in Order VII Rule 11(a) of the CPC are not at all proved.

11. So far as question of proper valuation of the suit is concerned, the plaintiff has specifically mentioned the total value of Rs.3 Crores of the suit properties and paid the maximum Court Fees on the said valuation. The plaintiff has deposited maximum cess of the court fees of Rs.3,00,000/- on the said valuation. Thus, there can not be question of jurisdiction of the court. It is pertinent to note that this court is empowered to decide this suit as per the valuation. On the contrary, the defendant has not produced any valuation certificate on record to prima facie prove the correct valuation of the suit properties. Thus, I do not find any substance in the objection raised in that regard.

12. The defendant has raised other several objections regarding the reply to the notice and other facts. In this regard, I am of the considered view that the plaintiff has to prove the material relevant facts. Factual aspects contented in the plaint, which not amounting to legal bar, cannot be taken in to consideration while deciding the application for rejection of the plaint. The Court cannot look in to the oral or documentary evidence at this juncture. Thus, these facts are not helpful to the defendant. In this backdrop, the application itself is not maintainable in the eye of law Hence, without hesitation, I answer point no.1 as no.

Point no.2:-

13. The defendant has utterly failed to prove that suit is barred by any law as well as the plaint does not disclose any cause of action. Further the defendant utterly failed to prove that the suit is under valued and no requisite court fees is paid. Thus, the plaint can not be rejected. The application is premature in respect of the valuation of the suit claim and payment of the court fees thereon. In the circumstances, the application is liable to be rejected being devoid any merits. Consequently, for my answer on point no.2 I proceed to pass the following order: -

ORDER

1. The application stands rejected.
2. Cost in cause..

(Dictated and pronounced in open Court.)

(A. C. Doiphode)

Date :- 08/06/2023.

6th Jt. Civil Judge S.D. Thane.