

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.862 OF 2014

Mahadev A. Jadhav
& Others

.. Applicants.
(Orig. Defendant.)

V/s.
Vaibhavi M. Jadhav
& Others

.. Respondents.
(Orig. Plaintiffs)

Mr. A. B. Tajane, for the Applicants.
Mr. V. S. Tadke, for the Respondents.

CORAM: M.S.SONAK,J.

DATE : 27th MARCH, 2015.

PC:-

This Petition is directed against the order dated 9th April, 2014 made by 4th Joint Civil Judge, Senior Division, Solapur, rejecting the Applicant's application under Order VII Rule 11 (d) of the CPC.

2 It is the case of the Petitioner that the Respondent/Plaintiff, in paragraphs 5 and 6 of the plaint has made a statement that the suit properties have already been partitioned, but in the prayer clause, once again decree for partition has been applied for. This according to the Petitioner, is impermissible and therefore, by virtue of the statement made in the plaint, the suit is barred by law. In such circumstances, the learned Counsel for the Applicant contends that the plaint ought to have been rejected and the impugned order, in so far it declines to do so, is without jurisdiction.

3 Having heard the learned Counsel for the parties and perused the record, in my judgment, there is absolutely no jurisdictional error in the making of the impugned order. The averments in the plaint have to be read in their entirety. It is not permissible to cull out some statement in the plaint and on the such basis, urge the rejection of the plaint.

4 In the present case, Plaintiff No.3 is wife of Defendant No.1. Plaintiff Nos.1 and 2 are the children of Defendant No.1. In paragraph 5, by reference to the three suit properties, the Plaintiffs have averred about the factum of partition as between the Defendants *inter se*. The pleadings, even in this regard are not clear. The scope and import of such averments is required to be determined in the course of the Trial.

5 In any case, in so far as prayer clause (c) is concerned, the Plaintiffs seek their share from out of the properties described under clause 1(B), which according to the Plaintiffs has come to the share of original Defendant No.1. The so called partition *inter se*, between the Defendants is therefore quite irrelevant.

6 This is clearly not a case where the plaint warrants rejection on the basis of any statement made therein. Besides, the provisions of Order VII Rule 11(d) of the CPC contemplates rejection of the suit, where the suit appears from the statement in the plaint to be barred by any law. The application under Order VII Rule 11 of the CPC made by the Petitioner merely made reference to certain isolated statements in the plaint, however, it was not demonstrated under which provisions of the law, such a suit was barred.

7 In view of the aforesaid, the present Petition is dismissed.

There shall be no order as to costs.

8 It is made clear that the observations in the impugned order as also this judgment and order are for the limited purposes of deciding the Applicant's application under Order VII Rule 11 of the CPC. Accordingly, there is no necessity for the learned Civil Judge to be influenced by such observations at the stage of finally deciding the suit on its own merits.

(M.S.SONAK,J.)