

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

CIVIL REVISION APPLICATION NO.2 OF 2015

(Shri Prabhakar s/o Harishchandra Bagwe and another ..vs.. Smt. Arti wd/o Deepak Kamlakar and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.
DATED : 13-01-2016

Heard Shri S.G. Shukla, learned Advocate for the applicants and Smt. S.P. Deshpande, learned Advocate for the non-applicant No.1.

2. The applicants have challenged the order passed by the trial Court, rejecting their application under Order VII Rule 11 of the Code of Civil Procedure.

3. The non-applicant No.1/plaintiff has filed the civil suit praying for decree for partition, possession and cancellation of the sale-deed alleged to have been executed by Deorao Kamlakar in favour of the present applicants/defendant Nos.2 and 3. The non-applicant No.1/plaintiff had filed an application seeking exemption from paying Court fees and it was granted. By the application (Exhibit No.37), the applicants/defendant Nos.2 and 3 contended that the non-applicant No.1 cannot claim the exemption as Deepak Deorao Kamlakar was unmarried and the non-applicant No.1 cannot claim

to be his widow. The applicants/defendant Nos.2 and 3 further contended that the plaintiff is claiming share in the property of Deepak Deorao Kamlakar on the basis that she is widow of Deepak Deorao Kamlakar and she is not claiming her share in matrimonial property and therefore, she cannot claim exemption from paying Court fees. The applicants/defendant Nos.2 and 3 further submitted that there is no cause of action in favour of the plaintiff and therefore, the plaint is liable to be rejected.

4. The learned trial Judge has rightly rejected the contention of the applicants/defendant Nos.2 and 3 as far as prayer of rejection of plaint under Order VII Rule 11(a) of the Code of Civil Procedure is concerned. The plaint cannot be rejected on the ground that there is no cause of action in favour of the plaintiff. At this stage, the Court is required to only examine whether the plaint discloses the cause of action and it being undisputed that the cause of action is disclosed, the plaint cannot be rejected on this ground.

5. As far as the other part of the order is concerned, Shri S.G. Shukla, learned Advocate for the applicants, on instructions, has given up the challenge as raised by them to the effect that Shri Deepak Deorao Kamlakar was unmarried and the plaintiff cannot claim to be his widow. It is submitted that as the plaintiff is claiming her share in the property on the basis that she is widow

of Deepak Deorao Kamlakar, the plaintiff is liable to pay the Court fees and she cannot seek exemption as exemption is available only if the share is claimed in matrimonial property.

6. The learned trial Judge has recorded that the contentions of the applicants in this regards will have to be considered after recording of evidence and this is in view of the dispute raised by the applicants that Deepak Deorao Kamlakar was unmarried and the plaintiff cannot claim to be widow of Deepak Deorao Kamlakar. Now the applicants/defendant Nos.2 and 3 have given up this challenge.

7. In my view, it would be appropriate to remit the matter to the trial Court for the purpose of considering as to whether the plaintiff can claim exemption from paying Court fees though she is claiming share in the property belonging to her deceased husband, as per the policy of the Government incorporated in the Government Resolution dated 01-10-1994 and amended by the Government Resolution dated 23-03-2000. The learned trial judge shall consider the application (Exhibit No.37) filed by the applicants only on this point.

8. The petition is disposed in the above terms. In the circumstances, the parties to bear their own costs.

The fees of the learned Advocate Smt. S.P. Deshpande appointed through High Court Legal Services Sub-Committee, Nagpur for the non-applicant No.1 is quantified at Rs.2,000/-.

JUDGE

pma