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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9232 OF 2019

Siddhu @ Siddha Appa Bage ..Petitioner

vs.

Sau. Balabai Siddhu @ Siddha Bage & anr. ..Respondents

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Shri P.M. Arjunwadkar for petitioner.

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CORAM : M.S.KARNIK, J.

DATE : 26th AUGUST, 2019

P.C. :

By this Petition filed under Article 227 of the Constitution of India the petitioner is challenging the order passed by the trial Court dated 6/6/2019 rejecting the application made by defendant Nos. 1 under Order 7 Rule 11 (d) read with Section 151 of the Code of Civil Procedure praying for rejection of the Plaint.

2. It is the contention of learned counsel for the petitioner that the plaintiff is wife of defendant No.1. Defendant No.2 is third person and factually related to defendant No.2 as a

nephew. By a registered sale deed dated 7/9/2015 defendant No.1 alienated the suit properties in favour of defendant No.2.

3. The plaintiff filed the suit for partition and for declaring the sale deed is not binding on the share of the plaintiff. The defendant No.1 filed the application for rejection of Plaint. The trial Court rejected the application.

4. It is the contention of learned counsel for the petitioner that the plaintiff being the wife of defendant No.1 cannot maintain a suit for partition. He would further submit that the plaintiff cannot be said to be a coparcener in the suit properties. She therefore has no right to seek partition. According to learned counsel, the plaintiff only has right to claim maintenance from defendant No.1. He would invite my attention to Article 305, 314 read with 211 of Mulla's Uncodified Hindu Law to support his submission that the present suit filed by the plaintiff – wife of defendant No.1 is not maintainable.

5. I have heard learned counsel for the petitioner and also perused the impugned order. The plaintiff has approached the trial Court with a specific case that the sale deed dated 7/9/2015 executed by defendant No.1 in favour of defendant No.2 is null and void. The suit is filed after the sale deed is executed by defendant No.1 in favour of defendant No.2 and therefore the plaintiff has approached the trial Court for declaration that the sale deed is not binding on her share.

6. There is no disputing the proposition of learned counsel for petitioner that wife has no right to file suit for a partition and she cannot claim the share in the joint properties as there is no partition. However, the trial Court was of the view that as the plaintiff admittedly has undivided share in the suit properties and furthermore as defendant No.1 has executed sale deed in favour of defendant No.2, in this view of the matter the plaintiff is seeking a declaration that the sale deed is not binding on her share. No doubt in the suit the plaintiff has prayed for partition. But at the same time she seeks a relief that the sale

deed executed by respondent No.1 is not binding on her share. The respondent No.1 having sold of the suit property, consequent upon while the plaintiff seeks the relief of declaring the sale deed is not binding on her share, in my opinion this cannot be a case covered by the ambit of Order 7 Rule 11 to reject the Plaint only because the relief of partition is also prayed in this suit. Having gone through the order passed by the trial Court I find no reason to interfere with the trial Court's order. The Petition is dismissed.

(M.S.KARNIK, J.)