

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.629 OF 2019

(VISHAL VISHNUPANT MAGAR & ANR...VS..SAU. CHANDA VIJAYAPPA GHANTI & OTH.)

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

Court's or Judge's orders

Shri V.K.Paliwal, Advocate for Petitioners.

CORAM : Z.A.HAQ, J.

DATED : FEBRUARY 07, 2019.

Heard.

The defendant Nos. 1 and 2 have challenged the orders passed by the subordinate Courts rejecting the applications (Exh.20 and Exh.30) filed by them under Order VII Rule 11 of the Code of Civil Procedure. By the applications (Exh.20 and Exh.30) the defendant Nos. 1 and 2 prayed that the plaint filed by the respondent No.1/plaintiff be rejected as the plaint does not disclose cause of action in favour of the plaintiff and the plaintiff has not valued the claim properly. According to the defendant Nos.1 and 2, the plaintiff has to value her claim as per the market value of the property in respect of which the Will dated 21st April 2016 is executed.

The objections raised on behalf of the defendant Nos. 1 and 2 by the applications (Exh.20 and Exh.30) are as vague as possible.

Be that as it may, the plaint cannot be rejected under Order VII Rule 11(a) of the Code of Civil Procedure on the ground that the plaint does not disclose cause of action in favour of the plaintiff. The plaint can be rejected under Order

VII Rule 11(a) of the Code of Civil Procedure only if it does not disclose cause of action at all. There is difference in the two things i.e. “the plaintiff not having cause of action in his/her favour” and “plaint does not disclose a cause of action”.

On examining the plaint, I find that the cause of action is disclosed in paragraph No.15 of the plaint. Whether there is cause of action in favour of the plaintiff or not cannot be examined at this stage and the plaint cannot be rejected on that ground.

As far as other objection regarding valuation of the claim is concerned, I find that though the defendant Nos. 1 and 2 have not pointed out the valuation of the suit properties, for the purpose of payment of court fees by the plaintiff, the learned trial Judge has properly examined the issue in paragraph No.8 of the impugned order.

Again, whether the claim of the plaintiff is barred by law and whether the married daughter is entitled for partition of ancestral property during lifetime of father, also cannot be examined at this stage. The issue as to whether the daughter can seek partition of the dwelling house in view of the amendment to the Hindu Succession Act 1956, by Amendment Act 2005, will have to be examined at the trial of the suit. The plaint cannot be rejected under Order VII Rule 11 of the Code of Civil Procedure on these grounds. Hence, I see no reason to interfere with the impugned order.

The writ petition is **dismissed**.

In the cause title of the petition, it is shown that the petitioner No.1 is original plaintiff, though the petitioner No.1 is original defendant No.1. This casual approach has become a routine and it creates confusion resulting in consumption of judicial time of the Court. Hence, Advocate for the petitioner, for such negligence, is directed to deposit Rs.One Thousand with the High Court Legal Services Sub-Comittee, Nagpur and produce receipt of it on record within one month.

JUDGE

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