



A.No.3972 of 2021  
in C.S.No.1230 of 1995

A.No.3972 of 2021  
in C.S.No.1230 of 1995

WEB CO N.SESHASAYEE,J.

This application is filed for rejection of plaint.

2.C.S.No.1230 of 1995 is laid for enforcing an agreement dated 18.09.1993. The 3<sup>rd</sup> defendant in that suit has laid a suit in C.S.No.423 of 1995 for partition. In the partition suit, a preliminary decree has been passed and the 3<sup>rd</sup> defendant has 1/3<sup>rd</sup> share in the property that was declared.

3.The case of the plaintiff in C.S.No.1230 of 1995 is that, its vendor has acquired title to the property based on the Will, which Will was negated in the preliminary decree. This decree was passed in 2018 and on the strength of this finding in C.S.No.423 of 1995, the present application is filed.

4.Learned counsel for the Applicant/D3 supported this case down the line already narrated. The learned counsel for the plaintiff however submitted that the decree in C.S.No.423 of 1995 is a collusive decree and that the plaintiff in the present suit is not a party to that suit.

5.Heard both sides.

6.After carefully weighing the rival submissions as presented before this Court, this Court has very little option to dismiss this application and the reasons are:



WEB COPY



A.No.3972 of 2021  
in C.S.No.1230 of 1995

N.SESHASAYEE,J.

dk

- In a suit for Specific Performance, title is considered only as an ancillary and not mainly.
- If the vendor of Sale Agreement is found to have only lesser interest than what he / she / it may have asserted in the Sale Agreement then Section 12 of the Specific Relief Act comes to play and that it will take care.
- This apart, this application though fed by a decree passed in C.S.No.493 of 1995, it is still can be considered as a belated application since the suit is of the year 1995.

7.While the procedure has provided a facility to the defendant in a suit to seek rejection of plaint, then such right to seek rejection of plaint must be exercised within a reasonable time. There may be a systematic ill by preserving litigation, yet it is not given to the litigant to invoke the right to seek the rejection at the time of their choice.

8.This application accordingly is dismissed with cost.

16.12.2021  
(1/2)

dk

A.No.3972 of 2021  
in C.S.No.1230 of 1995