

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

WRIT PETITION NO. 3977 OF 2023

Nanda Digambar Awate and anr__ Vs. __ Madhukar Pundlikrao Awate and ors

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

Court's or Judge's orders

Mr. S.N.Bhattad, Advocate for petitioner

CORAM : AVINASH G. GHAROTE, J.

DATE : 13/07/2023

1] Heard Mr. Bhattad, learned counsel for the petitioner.

2] The application under Order 7 Rule 11 (b) & (d) of CPC for rejection of the plaint in RCS No. 5/2020, has been rejected by the learned Trial Court by the impugned order dated 23.11.2022 (pg.159).

3] Mr. Bhattad, learned counsel for the petitioner submits that two grounds were raised in so far as the provisions of Order 7 Rule 11 (b) of CPC is concerned, inasmuch as it was contended that the suit is barred by limitation on the ground that the suit was filed three years after the filing of the earlier suit i.e RCS No. 200/1985, which was decreed on 21.03.2011, which decree came to be confirmed in appeal by the judgment dated 16.02.2017, in which the shares were only modified. It is contended that the subsequent suit ought

to have been filed within three years from the appellate Court's decree.

4] This plea has been turned down by the learned Trial Court on the ground that limitation in such a situation would be a mixed question of facts and law and therefore cannot be decided under Order 7 Rule 11 (b) of CPC, considering the nature of the claim, which is a suit for partition, I do not see any reason to upset the said findings.

5] The second plea under Order 7 Rule 11 (d) of CPC is a plea under Section 11 of the CPC, on the ground that the suit property was also a subject matter in the earlier suit for partition bearing RCS No. 200/1985, the decree passed in which stood confirmed by the appellate decree as indicated above. In my considered opinion, a plea under Section 11 of the CPC is not susceptible to be considered under Order 7 Rule 11 (d) of CPC and it has to be decided on an issue being framed in that regard on the merits of the trial.

6] The plea that the claim in the suit is improperly valued has to be considered in light of the averments made in para 9 of the plaint (pg. 38) in which one of the suit property being an agriculture land, it has been valued at the land revenue payable. The other property being a house property is valued at Rs.7,97,228/- and court fee upon 1/7th share claimed therein had been paid thereon. No material has been

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brought to my notice to indicate that the valuation of the house property was something more than what was done in the plaint. I therefore do not see any reason to interfere in the impugned order. The petition is dismissed. No costs.

JUDGE

Rvjalit