



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

903 CRA NO. 29 OF 2025

AKASH BALAJI MANTHALKAR AND ANOTHER
VERSUS
CHANDRAKALA PRAKASHRAO MANTHALKAR & ORS

...
Advocate for the Petitioner : Mr. Gangakhedkar Shailendra S

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : January 23, 2025

PER COURT :-

1. The applicants / original defendant nos. 2 and 3 impugns order dated 02.01.2025 passed below exhibit 37 passed by Civil Judge Senior Division, Nanded, in Special Civil Suit No. 100/2021, by which their application under Order VII Rule 11 of Code of Civil Procedure seeking rejection of plaint for non disclosure of cause of action has been rejected.

2. Respondent Nos. 1 and 2 (original plaintiffs) instituted Special Civil Suit No. 100/2021 contending that the suit properties are ancestral properties of Prakash Manthalkar along with respondent no. 3. On 24.08.2021, plaintiffs asked respondent no. 3 to effect partition of suit properties and allot their one half share. The defendant refused to effect the partition and also gave threats to them. The plaintiffs, therefore, prayed for grant of decree of partition and separate possession and also claimed the relief of perpetual injunction from alienating and creating third party interest over the property. Later on, the plaintiffs amended suit contending that on 19.05.2021, defendants executed gift deed in favour of added defendant nos. 2 and 3 and sought declaration that the gift deed

excuted by defendant no. 1 in favour of defendant nos. 2 and 3 are not binding upon the rights of the plaintiff.

3. The appellants / added defendants filed application below exhibit 37 praying for rejection of plaint under Order VII Rule 11 of the Civil Procedure Code on the ground that no cause of action is employed against them in the amended plaint. In absence of the pleadings as to cause of action, the suit is not tenable against them. The plaintiff resisted the aforesaid application by filing their reply below exhibit 38. The trial Court after considering rival contentions rejected application vide impugned order dated 02.01.2025.

4. Mr. Gangakhedkar, learned Advocate appearing for the applicant submits that the applicants were not party to original suit. They have been arrayed as defendant nos. 2 and 3 by amending the plaint. By inviting attention of this Court to the pleadings in amended plaint, he submits that no specific cause of action has been pleaded against defendant nos. 2 and 3 / applicants. He would, therefore, urge that plaint is liable to be rejected for want of cause of action.

5. Having considered submissions advanced apparently, the plaintiffs are seeking the decree of partition and separate possession in the ancestral property. Initially, only defendant no. 1 was made party to the suit contending that on 24.08.2021, he refused to effect partition and grant half share to the plaintiffs. Later on, the suit has been amended after getting knowledge of execution of gift deeds in favour of defendant nos. 2 and 3. Those gift deeds are in relation to the suit property. The plaintiff has added prayer seeking declaration

against those gift deeds. In paragraph no. 12 A of the amended plaint, the specific stipulation is employed that the defendant no. 1 had no right or exclusive ownership over the suit property. The gift deeds are executed by him only with intention to deprive plaintiffs right in the suit property and defendant nos. 2 and 3 on the basis of illegal gift deeds are trying to create third party interest in the suit property, hence, they are to be restrained by passing the decree of injunction. Perusal of the averments of amended plaint and the prayer clause depicts that the plaintiff's suit is based on the cause of action pleaded in original plaint to seek decree of partition and injunction.

6. By way of amendment subsequent event as to execution of gift deeds in favour of defendant nos. 2 and 3 which was not within knowledge of the plaintiff at the time of institution of suit has been brought on record. Therefore, for the main relief of partition and separate possession, plaintiffs can certainly continue proceeding based on cause of action as pleaded in suit and her challenge to the gift deeds can be dealt with on the basis of such cause of action. It is not necessary for plaintiff to plead the separate cause of action against the added defendants. It is not necessary for plaintiff to plead separate cause of action against each of the defendants. The trial Court has rightly discussed aforesaid aspects in paragraph no. 10 of the impugned order and rejected application exhibit 37. No jurisdictional error is brought to notice of this Court. Hence, Civil Revision Application stands dismissed.

(S. G. CHAPALGAONKAR, J.)

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