

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
C.P.No.D-967 of 2012

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing of MA-4466/12
3. For hearing of main case.

12.09.2019.

Mr. Arbab Ali Hakro, advocate for petitioner.
Mr. Wasif Ali Mughal, advocate for respondent
Mr. Muhammad Ismail Bhutto, Additional Advocate General.
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The facts in brief necessary for disposal of instant petition are that the private respondent filed a suit for declaration, possession, partition and cancellation of documents with regard to the properties left by his late father, against the petitioner before the court of learned IInd Senior Civil Judge, Hyderabad.

2. The petitioner on service of notice by way of filing an application U/o VII Rule-11 C.P.C sought for rejection of the plaint so filed by the private respondent. It was dismissed by learned IInd Senior Civil Judge, Hyderabad vide his order dated 24.11.2011. It was impugned by the petitioner by way of filing a Revision Application. It was dismissed by learned District Judge, Hyderabad vide his order dated 04.05.2015. It is in these circumstances, the petitioner has filed instant constitution petition seeking a declaration to the effect that order so passed by learned trial and Revisional Courts are illegal and plaint so filed by the private respondent to be rejected under Order-VII Rule-11 C.P.C.

3. It is contended by learned counsel for the petitioner that the learned trial and appellate Courts have not addressed the points which

he taken for rejection of the plaint, no property was left by late father of the private respondent, which could have been inherited by the private respondent; the plaint was time barred and it was hit by non-joinder of necessary parties and the earlier suit was dismissed as withdrawn. By contending so, he sought for rejection of the plaint.

4. Learned A.A.G and learned counsel for the private respondent by supporting the order of learned trial and revisional Courts have prayed for dismissal of the instant constitutional petition by contending that the dispute between the parties being factual could only be resolved after recording of evidence and earlier suit was dismissed as withdrawn with permission to file the same afresh.

5. We have considered the above arguments and perused the record.

6. The private respondent in his plaint has prayed for the following reliefs.

- (a) To declare that all properties / assets which have been purchased by deceased father in the name of defendant No.1 mentioned above are Benami, wherein all the legal heirs having their respective shares being co-owners / co-sharers.
- (b) To declare that the **WILL DEED** dated 21.01.2004 and **DEEM** dated 28th Nov, 2008, are forged, fabricated and void documents having no legal value in the eye of law.
- (c) To appoint receiver / Nazir and to direct to recover / take over the entire properties / assets / Gold ornaments in its custody and in case any of property / properties / assets / gold ornaments has/have been sold, the sale proceeds thereof to be recovered from the defendant No.1 to distribute amongst all the legal heirs as per Sharia.

- (d) To direct the defendant No.2 to 4 to provide the up-to-date statement of accounts and detail of National saving certificates of deceased father if any as mentioned in para 10(b) (iv) hereinabove,
- (e) To direct the defendant No.1 to get vacate the rented portion of the Bungalow No.A-16, Situated in Phase-I, Gulshan-e-Mehran, Qasimabad, Hyderabad and handed over the peaceful physical possession thereof to the plaintiff, meanwhile the defendant No.1 be directed to deposit the rent of the said portion before the Nazir of this Hon'ble Court till the final disposal of the suit.
- (F) Any other, further and better relief or reliefs which this Hon'ble Court may deem fit and proper in the circumstances of the case.
- (e) Cost of the suit may also be granted.

7. The contents of the plaint are supported by an affidavit same normally are accepted to be true until and unless are proved otherwise. Order-VII Rule-11 C.P.C prescribed rejection of plaint at any stage of the proceedings, if it does not disclose cause of action; it is undervalued; improperly stamped and is barred by law. In the instant matter the rejection of the plaint is sought for by the petitioner mainly for the reason that it does not disclose cause of action; it is time barred; it is barred by law and it is bad for non-joinder of necessary parties. Admittedly, the petitioner and the private respondent are brothers interse, dispute between them is over the property, the ownership whereof is claimed by the petitioner. The private respondent has raised a rival claim to such ownership by making a claim that it was purchased by his late father in the name of petitioner. The rival claims could only be resolved after recording of evidence and not otherwise. In that

situation, it would be wrong to say that the plaint does not disclose a cause of action. Issue of limitation being mixed question of facts and law could also be resolved after recording of evidence in case like the present one. No law is pointed out, which may make the plaint to be barred. No suit could be defeated on account of non-joinder of necessary parties as is prescribed by Order-1 Rule-9 C.P.C. The dismissal of the earlier suit may not operate as resjudicata, as it was dismissed as withdrawn with permission to file the same afresh and such permission has not been challenged by the petitioner before any forum. In these circumstances, it would be very hard to declare the orders of learned trial and revisional Courts to be illegal and to order for rejection of the plaint in summary manner.

8. Based upon above discussion, the instant constitution petition is dismissed with no order as to costs with direction to learned trial court to dispose of the very suit expeditiously preferably within three months after receipt of this order.

JUDGE

JUDGE