

Order Below Exhibit 160

1. This application is preferred by Defendant under order 7 rule 11 of CPC for rejection of the plaint. The short fact of the application is that Plaintiff No. 1 Bharatsinh Gomansinh Solanki has filed his Affidavit of examination in chief on 28/09/2021 vide exhibit 99 as a Power of Attorney holder on behalf of other plaintiffs wherein original Power of Attorney is produced vide exhibit 99/1 in the court. The Plaintiff has produced bogus Power of Attorney. The evidence which shows that the Power of Attorney is forged is produced vide ex-121. It is stated that the report of handwriting expert of FSL Gandhinagar is produced vide exhibit 121 on 27/09/2023 wherein mention that signature/writing of power of attorney is false. Hence, the Plaintiff cannot give deposition before the court on oath and said deposition of the plaintiff cannot be accepted by the court. It is stated that as per order 3 rule 1 and 2 of CPC, only valid Power of Attorney holder shall give deposition on behalf of the parties. The court shall not accept forged Power of Attorney. The burden of proof to prove genuineness of writing and signature is on the plaintiff u/s 65 and 39(1) of Bhartiya Sakshya Adhinyam and the report of handwriting expert proves that said document is forged and false. Hence, the deposition of the Plaintiff on the basis of false Power of Attorney cannot be admissible and it can be discarded. Hence, this application is given under order 18 rule 4 and 5 of CPC for reject of the Plaintiff' suit and the plaintiff has no locus standi to proceed suit legally. Hence, this application is filed under order 7 rule 11 CPC for reject of the plaint.

2. Heard Learned Advocate of the Defendants and the Plaintiffs

3. This application is filed by Defendant under order 7 rule 11 of the CPC for rejection of the plaint. Before going into the merits of this application, the provision mentioned in order 7 rule 11 of CPC is to be considered. For the sake of convenience, Order 7 rule 11 of CPC is reproduced.

Rejection of Plaint- The plaint shall be rejected in the following cases-

(a) Where it does not disclose a cause of action;

(b) where the relief claimed is under-valued, and the plaintiff on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so,

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9 Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court for reasons to be recorded is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

Hence, as per the Provision of order 7 rule 11 CPC, the plaint is rejected

on the aforesaid grounds. It is well settled principle that the court primarily looks at the statements in the plaint, not the defendants written statement or defence, to decide on an order 7 rule 11 application. While deciding this application only the averment made in the plaint is to be considered whereas the defence of the defendants cannot be considered. While determining any application filed under order 7 rule 11, the court should restrict itself to the plaint and should not go into the detail facts as provided under the written statement or even the application filed under order 7 rule 11. This application under order 7 rule 11 is given by the defendant on 13/08/2025. The suit is instituted in the year 2008 and after a very long time and at the stage of the evidence, the defendant has filed this application on upon basis of his defense. However, Looking to the facts of this application, it appears that this application is based upon defence of the defendant. Looking to the record of the suit the original Power of Attorney is produced vide exhibit 99/1 and report of DFS Gandhinagar is produced by the exhibit 121 which is an opinion and it is not conclusive proof and this opinion report is only corroborative piece of evidence. Further, the Power of Attorney is forged or not is decide only after taking evidence of the parties. Whether the plaintiff Bharatsinh Gomansinh Solanki is capable to give deposition of examination in chief and his deposition is admissible in evidence or not ? and whether the power of attorney is forged ? only decide on merit and after giving opportunity to produce evidence of both the parties. Mere opinion relating to hand writing expert does not primary evidence and it is a corroborative piece of evidence. So the facts of this application seems to be defense of the defendant and the defendant has not stated any ground of order 7 rule 11 of CPC in the application. So this

application is based only defence of the defendant and the defendant has to prove the facts of this application. So, said applicaton does not fall any ground of order 7 rule 11 and hence this applicaton is not maintainable. Hence, I passed following order

Order

This application of defendant u/o 7 rule 11 of CPC is hereby rejected.

No order as to costs.

Place : Mangrol

Date : 6/12/2025

(K R Trivedi)

Addional Sr.Civil Judge

Mangrol