

**Order below Ex:11 Application under CIVIL PROCEDURE  
CODE,1908 ORDER 7 RULE 11 (a) and (d):**

1. Heard the Learned advocate for parties. Read this application, reply filed by the plaintiff vide Ex:14 and defendant has filed written argument regarding the present vide Ex:18. Perused other papers on record. The present order is passed below the same application therefore the facts of the application have not been narrated for cost of repetition.
2. The plaintiff has filed the present suit for declaration and removal of illegal construction and mandatory injunction under section 34 & 39 of Specific Relief Act. The defendant having served with the notice have appeared and file written statement against preset suit and also filed present application to reject the present suit under Order 7 Rule 11 (a) & (d) of the C. P. Code,1908.
3. Learned advocate for the defendant in his oral arguments have submitted as per the averments of the present application. The main contention raised is that the suit of the plaintiff is for declaration and as per contention of plaintiff that the defendant have construction over plaintiff's house which registered on Gam-panchayat record property no: 63 & house no:59 and the defendant house registered in Gam-panchayat record property no: 64 & house no: 59/1 and also aakrni made by panchayat and the statement produce by plaintiff and as per record the partition already made between the parties and plaintiff & defendant both are brother.As per

the say of plaintiff the construction made in year-2021 and the suit filed in year 2024 it clears that the suit was time barred and as per limitation Act, suit filed with in three years and plaintiff has made clever drafting for time barred suit and CPC Order 07 Rule-11(d) apply to present suit and the suit was liable to be rejected.

4. Learned advocate for the plaintiff in his oral arguments have submitted as per the averments of the reply vide Ex:14. The main contention raised is that the plaintiff had issued notice to defendant dated: 12/03/2024 and then after the present suit filed in court and defendant has not comply the said notice and also given threat to plaintiff that he is not ready to perform as per the contestation of the notice and then after the suit is filed. So the suit was in time limit and also the partition decided by defendant himself and no consent was taken by him and the present application given by defendant for wasting valuable time of court. So the present application is required to be rejected with cost. The defendant relies upon the citation of Hon'ble High Court and Hon'ble Supreme Court and prey to reject the said application with cost.

1	2021(0) AIJEL-SC 67061
2	2010(0) AIJEL-HC 224147
3	1196(1) GLH 65
4	2011 (0) AIJEL-SC 5339
5	2007(0) GLHEL-HC 217477
6	2012(0) GLHEL-HC 228986
7	2012(0) GLHEL-HC 227390
8	AIR 1996 CALCUTTA 253
9	AIR 2011 SUPREME COURT 3590

10	2005(0) GLHEL-SC- 35054
11	2004(0) GLHEL-HC 206649
12	AIR 1991 PUNJAB AND HARYANA 12
13	1974 LAW SUIT (BOM) 54
14	2001(0) AIJ-MH 125187
15	1996 (0) AIJ-UP 3512320
16	20025 LAW SUIT (SC) 925

**5.** Having heard the learned advocate for the plaintiff and defendant having considered the materials on record, it is very much clear that this application is filed mainly as the suit is for declaration and removal of illegal construction and issue mandatory order under Specific Relief Act. The same will have to be now considered keeping in mind the facts of the case and position of law.

**6.** It is settled principle of law that while deciding application under Order 7 rule 11, the entire plaint has to be read as a whole to find out whether it is barred by law. The relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. For the purposes of deciding an application under Order 7 Rule 11 of CPC, the averments in the plaint are germane.

**6.1.** As per the contention of plaintiff the plaintiff and defendant are real brother and defendant residing out of India and suit property purchase jointly in year 1982 and consideration amount paid by both the parties and half portion of property holding by the respected parties and partition made by both the parties and the said effect given in revenue record (Gampanchayat). So it clear from plaint the possession of suit property holding

by both the parties and the open space (wado) also holding by both parties and the said property hold by co-owner and before filing of the present suit notice was given to defendant on dt: 12/03/2024 and no reply given by the defendant and as per the provision of limitation law its mix-question of law and it can be decided by evidence led by both party. As per the thought full consideration of this court that when the possession holding by the co-owner its not illegal possession and the suit is not for specific performance of contract and its only for declaration and removal of illegal construction.

7. Considering above whole discussion and position of law, I am of the view that this application filed by the defendant is required to be dismissed.

Hence, I pass the following order in the interest of justice.

**ORDER**

1. **This present application is rejected.**
2. **No order as to costs.**

**Signed and pronounced in the open court on this 19th Day of August, 2025.**

**Place: Bardoli.**  
**Date: 19/08/2025.**

**Jayesh L. Parmar**  
**Add. Civil Judge, Bardoli**  
**Surat.**  
**Judge Code-GJ-01441.**

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