



2. Sri. Ravi S/o Vishnu Baikerikar, (U.F.M.)  
Age: 58 years, R/o: Parodigm Hights,  
Flat No. 110, Third Floor,  
Behind Silk Board, BTM Layout,  
2<sup>nd</sup> Stage, Bengaluru-68.
3. Sri. Sudhakar S/o Shankar Baikerikar,  
Age: 77 years, Occ: Business,  
R/o: Near Ishwar Temple, Kencha Road,  
Karwar.
4. Sri. Dinakar S/o Shankar Baikerikar,  
Age: 75 years, Occ: Business,  
R/o: Muralidhar Math Road, Karwar.  
Now residing at Block No.13,  
Guruprasad building, Lt. Kotnis Road,  
Bhandar Galli, Mahim, Mumbai.
5. Sri. Ramesh Shankar Baikerkar,  
Age: 73 years, Occ: Business,  
R/o: Behind Union High School, Majali,  
Sawantwada, Karwar.
6. Smt. Rajani D/o Shankar Baikerikar,  
Age: 61 years, Occ: Housewife,  
R/o: C-101, Akar Arcade, Dadi Shet Road,  
Malad (West), Mumbai.
7. Smt. Praveena W/o Santosh Shet,  
Age: 59 years, Occ: Housewife,  
R/o: EWS 741, First Cross, Navanagar,  
Hubballi.

8. Smt. Shobha W/o Madhav Bandiwadekar,  
Age: 63 years, Occ: Housewife,  
R/o: 52/2, Erandavan, Prabhat Road,  
Pune-04.

[D-3 &4 By Sri. KRD, Adv]  
[D-1, 2, 5 to 8-- Exparte]

**I.A.No.II**

**Applicants:** Sri. Dinakar S/o Shankar Baikerikar,  
Defendant No.4

Vs.

**Opponents:** Sri. Mohandas S/o Shankar Baikerikar,  
Plaintiff

**ORDERS ON I.A. NO.II**

I.A.No.II is filed by the counsel for the defendant No.4 under order VII Rule 11(A), (B), (C) & (D) R/w. Section 16 of C.P.C and Section 11(2) of Karnataka Court Fee & Suit Valuation Act 1958.

2. It is submitted by the defendant No.4 that there is no cause of action to file the present suit and this court has no jurisdiction to grant the relief of declaration based on the will with respect to the rented house situated in Block No.13, Bhandargalli, Guruprasad Building, Mahim,

Mumbai-13, shown at Sl.No.7 of the suit schedule properties. Earlier a suit was filed which was dismissed granting liberty to the plaintiff to file separate suit for declaration to prove the alleged will dated 01.02.1984. Though the plaintiff has sought for the relief of declaration however, to avoid the payment of court fee, the valuation is shown as Rs.18,00,000/-. Suit is sought for partition and hence, the plaintiff ought to pay court fee on the market value of the property. In addition, he has submitted that the suit is time barred as the cause of action for filing the suit arose, when the testator Sri. Shankar Vithal Baikerikar died on 20.01.1988 and hence the suit ought to have been filed within 3 years. The existence of the property is also not established. The plaintiff has also claimed full right in the property at Mumbai as per the Will without proving the ownership. Hence for these reasons prayed to reject the plaint.

3. The counsel for the plaintiff has filed objections to the application contending as follows:

It is submitted by the plaintiff that Late. Sri Shankar Vithal Baikerikar has executed a Will and the present suit is filed for partition of the properties on the basis of the Will executed by Late. Sri Shankar Vithal Baikerikar. It is submitted that the plaintiff has sought for declaration of ownership only with respect to the share allotted to the plaintiff as per the Will and hence the question of payment of court fee on the entire property does not arise. The court fee paid by the plaintiff is proper and sufficient. In addition, the suit of the plaintiff is within the period of limitation. Hence it was filed after dismissal of the earlier suit. The Plaintiff has not sought for entire ownership right on the property situated at Mahim, Mumbai and has only sought for the extent allotted to his share in the Will dated 01.02.1984 and hence the question of payment of court fee on the entire value of the property does not arise. Even though the Will executed by Late. Sri Shankar Vithal Baikerikar is within the knowledge of defendants intentionally the present application is filed and hence prayed to dismiss the said application.

4. Heard both counsel for the plaintiff and defendant No.4.

5. The following points arise for my consideration:

**: POINTS :**

1. Whether the defendant No.4 has made out grounds for rejection of the plaint under Order VII Rule 11 of C.P.C.?
2. What Order?

6. My findings on the above points are as follows:

Point No.1 : **Partly in the Affirmative**

Point No.2 : As per final order,  
for the following:

**REASONS**

7. **Point No.1**:- The provision pertaining to rejection of plaint in C.P.C. empowers the courts to deal with such a situation by summarily rejecting sham plaints or suits at the threshold if the Court is satisfied that the action should be terminated on the basis of any of the six grounds mentioned under Order 7 Rule 11 of the Code.

## **Grounds of Rejection of Complaint**

Rule 11 of Order 7 of CPC provides 6 grounds for the rejection of a complaint. These grounds are as follows:-

### **(1) Nondisclosure of a cause of action**

It has been observed by the Courts that where the complaint instituted does not present or disclose a clear right to sue or a clear 'cause of action', such a complaint is liable for rejection.

### **(2) Complaint is under-valued**

An under-valued complaint is liable to be rejected as it would circumvent the law on court fees and also the rules relating to pecuniary jurisdiction of the court. In such a case, the court may, before rejecting the complaint, grant extra time to correct such an error. It may further grant extra time in exceptional cases.

### **(3) Complaint is insufficiently stamped**

A complaint that has not been sufficiently stamped according to the Stamp Act 1899 is liable to be rejected so as to ensure compliance with the said Act and also to secure

the revenue interests of the state. As in the case of an undervalued plaint, here also the court may extend the time to make necessary corrections.

(4) Relief claimed is barred by law

In cases where the relief sought is barred by the law, such a plaint is liable to be rejected.

(5) When plaint is not filed in duplicate

A plaint that is not filed in duplicate as required by Order Rule 1(1), Court has to reject such plaint.

(6) Noncompliance with Rule 9 of Order 7

A plaint that does not comply with the Procedure on admitting plaint as provided under Rule 9 of Order 7 is liable to be rejected by the Court.

8. The learned counsel for the defendants would contend that the limitation for filing the suit starts from the date of death of the testator which in this case is on 20-01-1988 and the present suit is filed after lapse of almost 24 years. In addition it is submitted that the plaintiff has sought for declaration however court fee is paid treating it

to be a partition suit though absolute right is claimed and not joint family property. In addition it is contended that there is no document to show existence of the suit serial number 7 property. As far as the existence of the suit serial number 7 property it is a matter to be considered on trial.

9. The present suit is filed by the plaintiff for relief of declaration, that the plaintiff is the absolute owner of the property given to the share of the plaintiff as per the Will dated 01-02-1984 executed by the late Sri. Shankar Vithal Baikerikar and to allot full share in Sl.No.1 property situated in Ghadsai village Sy.No. 376 hissa 2 measuring 00-07-12 area measuring 00-01-08 and residential house standing there in and full right in Mahim, Mumbai property which is stated to be rented house situated in block No.13 Bhandargalli, Guruprasad Building, Mahim, Mumbai-13 and also for consequential relief of injunction and for division of property by metes and bounds.

10. Order VII rule 11 of C.P.C. mentions various grounds for rejection of plaint and the plaintiff has sought

for rejection of the plaint on the ground that the plaintiff has not mentioned the cause of action. As per as the cause of action is concerned, it is submitted by the plaintiff that earlier a suit was filed bearing O.S.No.26/2017 wherein the plaintiff had sought for the relief that they have right in the suit properties as per the Will by making division by the metes and bounds and in view of the question for maintainability of suit, the suit was dismissed as not maintainable giving liberty to the plaintiff to file a separate suit to prove the Will dated 01-02-1984. Though the defendant No.4 has contended that there is no cause of action, however in the first case, cause of action for the plaint to file the suit arose in O.S.No.26/2017 and the same of cause of action is continued in view of dismissal of the suit as not maintainable granting liberty to the plaintiff to file the separate suit to prove the Will dated 01-02-1984. Hence it cannot be considered that there is no cause of action for filing of suit. The earlier suit is not decided on merits. Hence the fact that the rights of the plaintiff is rejected by the defendants has given as cause of action for filing the present suit.

11. As held in the case of ***Saleem Bhai v. State of Maharashtra AIR 2003 SC 759***, for the purpose of deciding whether a plaint is liable to be rejected or not, only the averments in the plaint are to be considered, and not the pleas taken by the defendants in their written statements. In cases where there is a "mixed question of law and fact", the rejection of plaint is not ordered by the court as such a question needs the consideration of evidence as such a question cannot be decided solely on the basis of a plaint, but the decision of rejection of a plaint as provided under Order 7 Rule 11 has to be decided after looking at only the averments made in the plaint, and nothing else.

12. When the plaint has to be rejected on the ground of absence of cause of action it is only the plaint averments which have been to be taken into consideration. In this case the plaint averments clearly discloses a cause of action. Hence it cannot be considered that there is no cause of action to the plaintiff to file the present suit.

13. The other ground urged by the defendant No.4 is that the relief claimed in the plaint is undervalued and hence the has to be rejected as per Rule 11(B) of Order VII of C.P.C. As far as the valuation is concerned the plaintiff has paid court fees on half share and the value of the suit property is shown as Rs.18,00,000/-. The plaintiff has paid court fee of Rs.200/- as per section 35(2) of the Karnataka Court Fees and Suit Valuation Act. However on perusal of the relief sought for by the plaintiff in the plaint the suit is filed for the relief of declaration to declare that the plaintiff is the absolute owner of the properties given to his share under the will dated 01-02-1984. Hence the plaintiff is basically seeking relief of declaration as absolute owner to half extent of the suit property. Under such circumstances the plaintiff ought to have court fee on the market value of half share of the suit property in respect of which the relief of declaration of absolute ownership is sought and also for consequential relief of injunction.

14. The other ground urged by the defendants is that the suit is barred by limitation since the alleged will is dated 25-07-1988 and the testator died on 20-01-1988 and the

plaintiff ought to have filed suit after the death of the testator however the suit is filed after lapse of almost 25 years from the death of the testator and the plaintiff has filed the suit from the date of the order passed in earlier suit which is taken as the cause of action. However as far as the question of limitation is concerned it is a mixed question of law and fact and the period of limitation commences when the will is denied and the right of the plaintiff is denied by the defendants. In addition there is already a suit filed by the plaintiff which was not decided on merits and hence the cause of action of the earlier suit has continued in the present suit. Hence the question of limitation being a mixed question the plaint cannot be rejected on this ground. For the said reasons I answer **Point No.1 Partly in the Affirmative.**

15. **Point No.2:-** In view of my findings on point No.1, I proceed to pass the following:

**:ORDER :**

I.A.No.II filed by the counsel for the defendant No.4 under Order VII Rule 11(A), (B), (C) & (D) R/w. Section 16 of

C.P.C and Section 11(2) of Karnataka Court Fee & Suit Valuation Act 1958 is hereby partly allowed.

The plaintiff is directed to pay court fee on the market value of the property in respect of extent to which declaration of absolute ownership is claimed as required under Section 38 of the K.C.F. and S.V. Act within 30 days from the date of this order failing which the plaint is liable to be rejected.

(Dictated to the Stenographer, transcribed by her, revised and corrected by me, signed and then pronounced in the Open Court on this the **6<sup>th</sup> day of July, 2023.**)

**(Reshma .J. Rodrigues)**  
Prl. Senior Civil Judge,  
Karwar.