

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
SHAHAPUR

Dated this the 29th day of July- 2025

Present: Smt. Hema Pastapur, B.A.,L.L.B.

SENIOR CIVIL JUDGE & JMFC, SHAHAPUR

OS No.96/2024

Plaintiff: Mahiboobsab S/o Imamsab Mulla

(By Sri.S.A., Advocate)

Defendants: Imamsab S/o Gudusab Mulla & Ors.

(By Sri.R.N.D., Advocate)

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ORDER ON IA No.II

1. That, the defendants have filed the application under Order VII Rule 11(d) R/w Sec.151 of Civil Procedure Code with a prayer to reject the plaint as it is barred by limitation.

2. That, the defendant No.1 in his affidavit has contended that, he is the owner the suit properties and plaintiff is his son and under Mohammedan law after the death of the father the succession opens. Hence, the present suit is not maintainable as barred by law.

3. That, the plaintiff has filed his objections to said application and contended that, in his plaint he has specifically avoid that, the defendant No.1 is intending to divide the suit properties amongst his

other sons and he is not intending to give any share in the suit properties. Hence, he filed the present suit. That, the defendant No.1 is not having any right to divide the suit properties amongst his other children. Hence, prayed for rejecting the said application.

4. That, I have heard arguments and perused the materials placed on record.

5. That, the following points arise for My consideration and determination:-

1. Whether the present plaint is liable to be rejected as prayed for?

2. What order?

6. That, My answer to the aforesaid points are as

Point No.1: In the **NEGATIVE**.

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

REASONS

7. **Point No. 1:** That, the said defendant has claimed for rejecting the present plaint on the ground that it is barred by law.

8. It is to be noted here that, rejection of the plaint under Order VII Rule 11 of Code of Civil Procedure, is a drastic power conferred in the Court to terminate a civil action at the threshold. That, the averments in the plaint that has to be read as a whole to find out

whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order VII Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. That, in all other situations, the claims will have to be adjudicated in Course of the trial.

9. It is to be noted here that, in present case the defendants have contended that the present suit is barred by law. That, at the stage of exercise of power under Order VII Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. Hence, without much discussion, point No.1 is answered in the **NEGATIVE**.

10. **Point No.2:** That, as discussed on point No. 1, I proceed to pass the following:

-ORDER:-

That, the application filed by the defendants under I.A.No.II is hereby rejected.

No order as to cost.

(Directly dictated to the typist-copyist, typed by him, corrected by me and then pronounced in the open Court on this 29th day of July, 2025).

(Hema Pastapur)

**Senior Civil Judge & JMFC,
Shahapur.**