

ORDER BELOW EXH.25 IN REGULAR CIVIL SUIT NO.1290/2015.
CNRNo.MHAH08-001927-2015.

1] This is an application filed by the defendant under Order 7 Rule 11 of the Code of Civil Procedure for rejection of plaint. It is contended that, this suit is filed for declaration and perpetual injunction. The defendant appeared and filed his written statement and counter-claim. The defendant is contending in his counter-claim that the property in block No.173 adm.51 Ares is in the name of the plaintiff in 7x12 extract but in fact it is in possession of the defendant. In property block No.174 adm.0.51 Ares is in the name of the defendant but in possession of plaintiffs. The property in block No173 adm.0.51 Ares is not in possession of plaintiffs. Plaintiffs are required to be prayed the the prayer of possession in the suit. It is prayed that if such prayer has not bee made the plaint is required to be rejected as the suit is not tenable.

2] Plaintiffs opposed this application by filing say at Exh.26. It is contention that as per the decree in RCS No.72/1980 block No.173 comes to the plaintiffs and they are in possession of block No.173. This application is filed just to prolong the matter. So pray for rejection of this application.

3] Heard both sides. Perused record. The defendant comes with the case that the plaintiffs are required to be added the prayer of possession in this suit. As per Order 7 Rule 11 of the Code of Civil

Procedure, there is no such ground as contention raised by the defendant. Moreover, as per Order 7 Rule 11 (d) of the Code of Civil Procedure if the suit is barred by any law the plaint can be rejected. But there is no such contention of the defendant that the suit is barred by any law. Whereas the defendant is contending that regarding the facts of possession is required to be decided on merits.

4] The learned Advocate for the defendant relied on Anathula Sudhakar Vs. P. Buchi Reddy (ded) By Lrs & Ors. AIR 2008 SC 2033 In this Judgment the position regarding the suit for prohibitory injunction relating to the immovable property is given. Wherein it does not mentioned regarding rejection of plaint. The fact of this case and the present case are different. So this citation is not applicable to case in hand. Considering the contention of the defendant it does not come with the purview of Order 7 Rule 11 of the Code of Civil Procedure. Hence, this application is rejected.

Dt.14/09/2018

Sd/-
(K. P. Jain Desarda)
Jt. Civil Judge, S.D.
Sangamner.