

**ORDER BELOW EXH.18 IN R.C.S.NO.991/2024**

Defendant preferred present application under Order VII Rule 11 of Civil Procedure Code (herein after referred as C.P.C.). Plaintiff filed her reply at Exh.20 and denied all the contentions raised by defendant.

02. Heard Ld. Counsel for both parties. Also gone through averments of plaint, present application and relevant provisions of law, following points arise for my determination to which I have recorded my findings thereon for the reasons stated below :

<b><u>Sr. No.</u></b>	<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
1	Whether plaint is liable to be rejected under Order VII Rule 11 (a) of C.P.C. ?	<b><u>Negative.</u></b>
2	Whether plaint is liable to be rejected under Order VII Rule 11 (d) of C.P.C. ?	<b><u>Negative.</u></b>
3	What order ?	<b><u>As per final order.</u></b>

**REASONS****As to Point No. 1 and 2 :-**

03. Learned defence counsel argued that, plaint is liable to be rejected on the count that, plaintiff has no cause of action to file present suit and it is barred by limitation. I have gone through plaint averments. Present suit is for declaration, injunction,

measurement, fixation of boundaries and for removal of encroachment against defendant.

04. It is trite law that while adjudicating application under Order VII Rule 11, only averments made in the plaint has to be taken into consideration. Therefore, contentions made in the plaint required to be looked into.

05. To substantiate his claim plaintiff stated that, he has mentioned the cause of action arose on 15<sup>th</sup> of September 2024, however, defendant is showing the cause of action on 15<sup>th</sup> of August 2024. Even if there is a typographical mistake, it can be amended. According to plaintiff, defendant tried to use plaintiff's Gat No.77/3 as a access way and thereby caused damage to his onion crop and also picked up a quarrel by cutting plaintiff's tamarind tree. Defendant is trying to cut plaintiff's trees standing on the embankment and with the help of JCB is trying to widen the road and causing damage to plaintiff's crop in plaintiff's absence. Therefore, plaintiff filed present suit.

06. It is pertinent to state here that, in the present suit plaintiff is seeking the relief of declaration, injunction, measurement and fixation of boundaries of suit property as well as removal of encroachment. It is contention of defendant that, in his written-statement he has specifically stated that, Gat No.77/1 is at northern side of Gat No.77/2. To access his field in Gat No.78 he has a access way from northern side road of Gat No.77/3. The sale-deed executed by Sayaji Rahane in favour of Bajirao Rahane in April 1980 there is 12 ft. wide access way is

given. Therefore, the cause of action mentioned in the plaint is wrong. On 15<sup>th</sup> of August 2024 no cause of action arose to plaintiff to file present suit. He further contended that, the 12 ft. wide road was sold out by plaintiff's father Sayaji in 1980 to Radhuji Baghaji Rahane and Bajirao Bhagaji Rahane from the northern side of Gat No.77/3. The said road was purchased by defendant from Radhuji and Bajirao in the year 1999. Since then the said road is in his continuous use. Therefore, present suit without cause of action and barred by law of limitation.

07. I have gone through the plaint averments and record. It appears that, during pendency of the suit plaintiff preferred amendment application vide Exh.28 and thereby amended the date mentioned in the plaint para 8. However, in spite of this fact plaintiff has specifically mentioned in the plaint that on 15<sup>th</sup> of September 2024 defendant has entered into his Gat No.77/3 and caused damage to his onion crop. It is pertinent to state here that, cause of action is a bundle of fact and has to be considered collectively. It is settled law that, the objection raised by defendant in his written-statement cannot be considered while adjudicating present application. Therefore, the submissions made and the objections raised with regard to cause of action by defendant holds no water. Hence, I answer point No.1 in negative.

08. Now, coming to the objection raised about limitation, in this regard, it would be appropriate to go through the contents in the plaint. Perusal of the plaint, it reveals that, plaintiff has stated that, the cause of action arose on 15<sup>th</sup> of

September 2022 for the first time and present suit is filed on 22<sup>nd</sup> of November 2024. Therefore, the suit filed by plaintiff is well within limitation. Accordingly, I answer point No.2 in negative.

**As to Point No. 3 :-**

09. From the finding arrived at point No. 1 and 2, in answer to point No. 3, I proceed to pass following order :

**ORDER**

1. Application Exh.18 is rejected.
2. No order as to cost.

Dictated and pronounced in open Court.

Date :- 23/01/2026.  
Place :- Sangamner.

(Smt. D. P. Kaduskar)  
2<sup>nd</sup> Jt. Civil Judge Senior Division,  
Sangamner.