

ORDER BELOW EXH.13 IN R.C.S. NO. 21 OF 2025

This is an application filed the defendant as per Order VII Rule 11 of Civil Procedure Code.

2. The defendant submitted that, plaintiff have filed the suit of encroachment. However, the alleged land was belongs to original owner Mr. Dhore. There was one Government Road is passing throw the said land. Therefore, Government Public Work Department is necessary party in this matter. The plaintiff have suppressed the material information. The original owner Mr. Dhore is dead but his legal heirs are the necessary party in this matter. There is no cause of action for filing the suit. The original plaintiff never appeared in any activity. He is always represented by the Power-of-Attorney Holder. Even, the present suit is filed on behalf of Power-of-Attorney Holder. Therefore, there is no cause of action for filing the suit. Therefore, prays to reject the suit.

3. The plaintiff have filed reply below Exh. 14 and raised the objection on the ground that, the relief claim against the defendant is relating to the encroachment. Therefore, there is no question of adding Public Work Department or Secretary, Gram Panchayat as a necessary party. The present application is not maintainable. The cause of action is already mentioned in the plaint. The relief claim in the suit are properly valued and proper court fees stamp is affix. Therefore, prays to reject the application with costs.

4. Heard Ld. Advocate Mr. S.V.Ugle for the defendant and Ld. Advocate Mr. K.R.Deshpande for the plaintiff. Perused the application and the record. The plaintiff have filed the suit for declaration and permanent injunction. It reveal from the pleading in the plaint that, the plaintiff is the owner of 46 R land out of Gat No. 248. There is Government Road towards the Northern side of the suit property. But, the defendant is trying to erect construction between the suit property and the Government Road. The defendant is trying to encroach upon the Government Road. Therefore, it is clear from the said pleading that, the stand of the plaintiff that, the defendant did not possess any area in the Gat No. 248 and he is encroacher. Therefore, he claims to declare that the defendant did not have any right, title, interest in Gat No. 248. But, inadvertently in the said prayer clause the plaintiff failed to mention word 'no'. After considering the pleading the said mistake is appears to be that typographical. Only on that basis we can not draw the inference that there is no cause of action for filing the suit. The cause of action for filing the suit is the construction of defendant on the Government Road which is adjacent to the suit property. If, the plaintiff succeeded in his suit claim then definitely his right and interest could be violated due to said construction. Even, in that circumstances the possibility of encroachment can not denied. Therefore, it can not be said that no cause of action is revealed from the pleading in the plaint. Though, the defendant have denied the pleading but the position relating to the respective pleading could be clear at the final stage. At this primary stage only on the objection of the defendant the the pleading,

we can not draw the final conclusion that there is no cause of action for filing the suit.

5. There is no objection raised by the defendant that, the suit claim is not properly valued nor proper court fee stamp affix to the suit claim. The defendant have raised objection only on the ground that, Public Work Department is not added as a party in the suit. Though, the plaintiff have alleged that, defendant encroaching upon the Government Road but merely on that basis the Public Work Department could not be a necessary party to the suit. The burden lies upon the plaintiff to prove that, the defendant have encroached upon the Government Road and which will violate the right and interest of the plaintiff for enjoyment of the suit property. Another objection raised by the defendant that the legal heirs of original owner are not made party in the suit. But, in this matter the plaintiff alleging that the defendant did not having any share in Gat No. 248 on the other hand the defendant is claiming to be the owner of 160.10 sq. mtr. out of Gat No. 249. Both the parties are came with the pleading contrary to each other. The burden lies upon the defendant to prove his ownership on the particular land mentioned in the written statement. For that purpose original owner need not be party to the suit. For sake of argument though the question of necessary party could be arise but the said issue is in such nature which would be decided at the final stage. Only on that basis the plaint can not be rejected. Therefore, it did not reveal from the pleading in the present application that, the suit is hit by any of the reason mentioned in the order VII Rule 11 of CPC. Therefore, the objection raised by the

defendant is not sustainable. Hence, I am going to pass following order :-

ORDER

The application is rejected.

Date: 22.04.2025.

(A. H. Shaikh)
Jt. Civil Judge Junior Division,
Akot.