



RCS No. 191/2025
Janki Milind Vs.
Sarpanch, Sawargaon
MHAK060036932025

ORDER
(Below Exh.21)
(Passed on 13th March, 2026)

This is an application by defendant No. 3 under Order VII Rule 11(d) of the Code of Civil Procedure, 1908, to reject the plaint.

2. It is submitted on behalf of the defendant that the plaintiff has filed suit to restrain defendant Gram Panchayat from taking possession of 0 Hector 5 Are land out of the suit field block No. 10 situated at village Khaparwadi for the purpose of crematorium.

3. It is contended on behalf of the defendants that in Other Rights Column of 7/12 Extract of the suit property, there is an entry showing that 0 Hector 5 Are land out of the suit field is reserved for crematorium of the village. The defendant Gram Panchayat has also passed resolution in that regard on 28.06.2024. In these circumstances, the plaintiff gave Notice to defendants No. 1 and 2 under Section 18 of the Maharashtra Village Panchayat Act 1959 but no objection is taken therein against the said resolution of the Panchayat dated 28/06/2024. Besides, the plaintiff

has sought no declaration with regard to this resolution and filed suit for simplicitor injunction, which is not tenable for failure to seek the consequential relief of declaration.

4. It is further submitted on behalf of the defendants that defendants No. 1 and 2 have initiated the action to take possession of 0 Hector 5 Are land out of the suit field for the purpose of village crematorium on the basis of order passed by Sub-Divisional Officer, Akot dated 16.07.2025. According to plaintiff, the defendants by misusing the order of the SDO, dated 16.07.2025 are trying to take possession of 0 Hector 5 are land of the suit field for the crematorium. Therefore, according to defendants, a notice under Section 80 of CPC was mandatorily required to be given to the Sub-Divisional Officer and the SDO was required to be made party defendant. So also the order dated 16.07.2025 of the Sub-Divisional Officer, was required to be asked to declare as a null and void and not binding upon her by the plaintiff as a consequential relief. However, she has not sought even such declaration. Besides, the suit is barred under Section 182 of the Maharashtra Village Panchayat Act, therefore, it is argued that on behalf of the defendants that for all these reasons, the plaint is required to be rejected under Order VII Rule 11(d) of the CPC, 1908.

5. Per contra, Ld. Advocate for the plaintiff filed Say overleaf the application contending that the application is inconsistent with any of the provisions of law of rejection of plaint. The plaintiff has given necessary notice under Section 180 of the Maharashtra Village Panchayat Act, to the defendants No. 1 and 2. Its reference is duly pleaded in the plaint at Para 10. Rest of the objections raised by defendant need to be answered on merit during trial. Therefore, the application is not tenable. Hence, it is prayed to reject the same.

6. Heard Ld. Adv. Shri. G. K. Tikar for the defendants and Ld. Adv. Shri. D. M. Kute for the plaintiff. Perused the application, Say and documents on record.

7. In *limine*, it is pertinent to note that as per settled law, in order to decide the application under Order VII Rule 11, only averments of the plaint and the documents forming part of the plaint, have to be taken into consideration by the Court. Similarly, case must fall within any of the six limbs provided under Order VII Rule 11 of CPC.

8. As per settled law, in the case of **Sopan Sukhdeo Sable Vs. Asstt. Charity Commissioner, (2004) 3 SCC 137**, the pleading in the plaint has to be construed as it stands

without addition or subtraction of words or change of its apparent grammatical sense. Similarly, it has to be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.

9. Here in this case, according to the defendant, the plaint is barred by law under Order VII Rule 11(d) of CPC. According to defendants, the suit is barred by Section 182 of Maharashtra Gram Panchayat Act, 1959. However, Section 182 of the Act, 1959, provides for Delegation of Powers. It does not bar jurisdiction of the Civil Court to entertain such suit.

10. According to the defendant, no notice under Section 80 of the CPC is given to the Sub-Divisional Officer, Akot, since the order dated 16.07.2025 of the Sub-Divisional Officer is disputed by the plaintiff. However, plaint shows that the plaintiff has claimed possession over the suit property and has not sought any relief against the State or any Order passed by its instrumentality. This is suit for simplicitor injunction against village body of the Panchayat which is admittedly, not government body. In these circumstances, no notice under Section 80 of the CPC was required to be sent by the plaintiff. So far status of defendant No. 1 and 2 is concerned, plaintiff has admittedly given notice under Section 180 of the Act, 1959 to them.

11. According to the defendant, the Sub-Divisional Officer, Akot, whose order dated 16.07.2025 is alleged to be misused by the defendants, is not made party defendant. Therefore, the suit is barred by law for non-joinder of necessary parties. In this regard, the Hon'ble Supreme Court in the case of **Prem Lata Nahate and Anr. Vs. Chandi Prasad Sekariya, AIR 2007 SC 1247**, has held that the plaint could not be rejected by invoking Order VII Rule 11(d) of the Code, 1908, since it could not be held that, a suit which suffers from the defect either of *mis-joinder* of parties or *mis-joinder* of causes of action or both, is barred by any law. Hence, merely because no relief of declaration is sought against the order dated 16.07.2025 passed by the SDO, Akot and against the resolution dated 28.06.2024 of the village Panchayat and said SDO is not made party, it cannot be said that the suit is barred by law.

12. The defendant has relied upon the judgment of Hon'ble High Court of Karnataka delivered in **G. V. Reddy Vs. Ministry of Communication Employees Co-operative Housing Society Ltd.**, Regular First Appeal No. 1069/2019 dated 02.07.2019. I carefully gone through the judgment the plaintiff had filed suit seeking relief of permanent injunction restraining the defendant or its agents, servants or any other person claiming through them from interfering with the plaintiff's peaceful possession and enjoyment of

suit schedule property. The defendant by contending that the suit property had been acquired by Bengaluru Development Authority under Government Gazette for the formation of layout by the defendant-Society, had moved application under Order VII Rule 11(a) of CPC. The layout was not formed. Therefore, it was contended by defendant that the suit for injunction filed in Civil Court with respect to non-existing property was not maintainable. Further, according to defendant therein, the land was acquired under the Land Acquisition Act. The Hon'ble Court, the land being acquired under the Land Acquisition Act, held that jurisdiction of Civil Court under Section 9 of CPC stands excluded and Civil Court has no jurisdiction to go into the question of validity or legality of Notification under Section 4 and declaration under Section 6 and subsequent proceedings. Such rights are vested with Hon'ble High Court only, under Article 226 or Hon'ble Supreme Court under Article 136 of the Constitution. The Hon'ble High Court upheld the order of Rejection of Plaint passed by the Trial Court.

13. However, in the case in hand, it is material to note that the suit property is still admittedly, in possession of the plaintiff. No dispute is raised over the title of the plaintiff over the suit property nor it is acquired under Land Acquisition Act. Therefore, the facts of the case being

different from the aforesaid case law, I am of the humble opinion that the case law of **G. V. Reddy (supra)** is not helpful to the plaintiff.

14. The plaintiff has also relief upon the judgment of Hon'ble Guwahati High Court in the case of **Musstt Anjira Khatoon Hazarika Vs. Tapan Kumar Das, 2015 (2) Civil L. J 873**, I carefully gone through the judgment. The plaintiff had filed suit for declaration that the land described in the plaint contained only a public drainage to be used by plaintiff and others forever and restraining defendants from disturbing peaceful enjoyment of drain facility in the property owned by defendant. The Trial Court rejected the plaint holding that alternative efficacious remedy was available to the plaintiff under Section 41(h) of Specific Relief Act and Sections 231, 239, 243, 248, 246 of Guwahati Municipal Corporation Act and such a remedy under Section 41(h) of SR Act would be a bar within the meaning of Order VII Rule 11(d) of the Code, 1908. The suit was held to be not maintainable.

15. Here in this case, the suit property is allegedly absolute property of the plaintiff. It is admittedly in possession of the plaintiff and not in possession of the defendants. So far availability of alternative efficacious remedy to plaintiff is concerned, it cannot be decided in this

application, since the court has to confine itself to the averments of plaint only to decided application under Order VII Rule 11 pf CPC, 1908. Rather, it appears to be mixed question of law and fact in the particular set of the facts of the present suit. In such circumstances, the said case law of **Musstt Anjira (supra)** is also not helpful to the defendant as prayed. In the result, I come to the conclusion that present application is devoid of merit. Hence, I pass the following order ;

ORDER

The application (Exh. 21) is rejected.

Date : 13.03.2026
Place : Akot.

Sd/-
(A. A. Mali)
2nd Jt Civil Judge (Jr.Dn),
Akot, Dist. Akola.

**RCS No. 191/2025
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CERTIFICATE

I affirm that the contents of this PD.F file Order are same word to word as per the original order.

Name of Stenographer	:	P. N. DURATKAR
Court Name	:	2 nd Jt Civil Judge (Jr.Dn.) & JMFC, Akot, Tq. Akot, Dist. Akola
Date of decision	:	13/03/2026.
Order Signed by PO on	:	16/03/2026.
Order Uploaded on	:	17/03/2026.