

Order below Exh.56 in RCS No- 08/2019

1. Defendant No.1 has prayed for rejection of plaint *vide* Order VII Rule 11 of the CPC through this application.

2. Defendant No. 1 admitted that Plaintiff No. 3 is his wife. However, he further contends that he has three daughters from another woman named Bebi, who came into contact with him and began residing with him after the matrimonial dispute with Plaintiff No. 3, which led her to desert him. The names of these three daughters are as follows: **A.** Pallavi Jitendra Potdukhe, **B.** Nita Arvind Ghatol, **C.** Sapna Pralladh Sontakke. Defendant No. 1 asserts that these three daughters are also his legal heirs, and the plaintiffs have intentionally suppressed this fact from the court. Therefore, the suit cannot proceed legally without including them as parties. Consequently, he has filed the present application.

3. Defendant No. 2 strongly opposes the application by filing his say on the overleaf of the same application and prayed for rejection of the application. The plaintiffs have vehemently contested the application in their reply *vide* Exh.57. The plaintiffs have refuted the claim that Defendant No. 1 has three daughters, stating that they are hearing these names for the first time. Defendant No. 1 has not furnished the complete names and addresses of his daughters in his written statement. Furthermore, the plaintiffs contended that Plaintiff No. 3 is the legally wedded wife of Defendant No. 1. Hence, during the lifetime of Plaintiff No. 3 and without a legal divorce, any daughters born to a another women from Defendant No. 1 cannot be considered as legal heirs of Defendant No. 1. Therefore, they should not be treated as necessary parties to this suit. Additionally, the plaintiffs contend

that this application is not valid under Order VII, Rule 11 of the Civil Procedure Code (CPC), and assert that Defendant No. 1 has filed this application with the sole intention of prolonging this matter, thereby abusing the legal process. Therefore, according to him, present suit is not liable to be rejected in any of the clauses of Rule 11 of Order VII of CPC. Accordingly, it is prayed that the application may be rejected.

4. Both the application as well as the say are supported with affidavits of defendant No.1 and plaintiff No.1, respectively. Perused application, affidavit, documents filed in support of application and the record. Heard both the sides.

5. For deciding said application following points arise for determination. My findings thereon are mentioned against them with reasons to follow -:

<u>POINTS FOR DETERMINATION</u>	<u>FINDING</u>
1. Whether the plaint is liable to be rejected <i>vide</i> Order VII Rule 11 of the CPC ?	In the Negative
2. What order ?	As per Final Order.

REASONS

As to Point Nos.1 & 2

6. Defendant No.1 has claimed that three daughters namely 1. Pallavi Jitendra Potdukhe, 2. Nita Arvind Ghatol, 3. Sapna Pralladh Sontakke are his heirs born from the women namely Bebi therefore they are necessary party to the suit. However, the Ld. Adv. A.G.Awatirak for defendant No-1 failed to satisfy, as to how plaint would be liable to be rejected on the ground

of non joinder of necessary parties. Such ground is not covered by any of the clauses of Rule 11 Order VII of the CPC.

7. The Ld. Advocate D.S.Dharaskar for the plaintiff's vehemently denies the claim that Defendant No. 1 has three daughters born from another woman, as this woman is not legally married to Defendant No. 1. Consequently, these daughters cannot be considered as legal heirs of Defendant No. 1. Hence, according to him, defence of defendant No-1 cannot be taken into consideration while deciding an application for rejection of plaint. He has sought reliance on the ratio laid down in "**Prem Lala Nahata Vs Chandi Prasad Sikaria.**" **decided on 02 February 2007** wherein The Hon'ble Apex court held that misjoinder of parties or causes of action in a civil suit is a procedural issue that does not lead to the suit being barred by law. Instead, The Hon'ble Apex Court emphasized that the focus should be on addressing such misjoinders through procedural solutions, like consolidating suits or ordering separate trials, in order to facilitate the convenience of the trial process. The rejection of a suit solely on the grounds of misjoinder of parties or causes of action is not justified.

8. Similarly, he has sought reliance in ratio laid down in **Babulal Vs Smt. Omwati, decided on 26 August 2014** wherein it was held by the Hon'ble Madhya Pradesh High Court that non-joinder of a necessary party is not a ground recognized by Order 7 Rule 11 of the Code of Civil Procedure (CPC) for the immediate rejection of a plaint. Instead, The Hon'ble High Court recognized that non-joinder of necessary parties typically leads to affording the plaintiff an opportunity to add the necessary party to the suit.

9. Furthermore, he has sought reliance in ratio laid down in **Rajendra Sah Vs Jamila Khatoon decided on 21 January, 2016**

wherein The Hon'ble Patna High Court upheld the lower court's decision to reject the defendant-petitioner's application filed under Order 7 Rule 11 of the Civil Procedure Code, as the relief sought was misconceived, and the raised issues regarding non-joinder of a necessary party, cause of action, and limitation were not suitable for consideration under this rule, ultimately dismissing the writ application.

10. I have gone through all these case laws. Ratio mentioned in all case laws is precisely settled legal position on the respective aspects while deciding an application for rejection of plaint. Therefore, whatever defence taken by defendant cannot be taken into account while deciding an application for rejection of plaint.

11. From perusal of plaint, there does not appear any sentence by virtue of which it can be said that present suit is barred by any provisions of law. The Ld. Adv. A.G.Awatirak for defendant No-1 failed to satisfy as to how the plaint would be liable to be rejected or as to under which clause of Rule 11 of Order VII of the CPC, present plaint would be liable to be rejected. In the circumstances, it is clear that the application is without any substance. Therefore, application is liable to be rejected. Accordingly, point No.1 is answered in the negative and for point No.2, following order is passed.

ORDER

The application stands rejected with costs of Rs.500/- payable to plaintiffs.

(Self Typed and Pronounced in Open Court)

(Vishnu D Gite)

Date:- 26.10.2023.

Jt. Civil Judge, J.D., Balapur