

	<p><b><u>ORDER BELOW EXH. NO. 41 IN R.C.S. NO.</u></b> <b><u>51/2016</u></b> Rafeeqkhan Rasheedkhan and others <u>Vs.</u> Shaikh Naseer Shaikh Vazeer and others</p>
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By way of this application, defendant No.2 to 7 seeks for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as '*C.P.C*' for the sake of brevity).

**Brief narration of the contents of the application.**

2. Defendants have sought for rejection of the plaint on multiple grounds such as that the relief of declaration has not been claimed in the present suit, although plaintiffs contend that the sale deed bearing No. 5131 dated 28/11/2014 executed in favour of the defendant No.8 to 11 is void. Defendants further contend that the possession of the suit property is stated to have been transferred as per the recitals in the sale deed bearing No. 5131 dated 28/11/2014, yet, plaintiffs claim that they are in possession of the suit property. They also assert their ownership in the suit property. Thus, prima facie case is not made out in favour of the plaintiffs. There exists no cause of action in favour of the plaintiffs. Defendants further contend that the present suit is barred by the 'principles of res judicata' as R.C.S No. 11/2016 pertains to the suit property as that of the present suit and the parties of both the suits are same. Defendants further contend that proper valuation has not been put on the present suit and if the valuation is done on the basis of the sale deed bearing No. 5131 dated 28/11/2014, then, the present

suit goes beyond the pecuniary jurisdiction of this Court. Hence, considering all such factors, the plaint is liable to be rejected.

**Say of the Plaintiffs.**

3. Plaintiffs have resisted this application by filing their say below Exh. No. 45. They have contended that the cause of action has been mentioned in paragraph No. 9 of the plaint. O.VII, r. 11(a) to (f) do not mandate that if any particular relief is not asked for or prayed for, then, the plaint should be rejected. The question as to whether any relief is necessary or not will only arise on merit and the suit will be decreed or dismissed accordingly. Section 31 and 34 of the Specific Relief Act, 1963 is about the cancellation of the sale deed or declaration against it and there is no whisper about rejection of plaint. Hence, there is no need to dwell upon this point and this point can be looked into later. Plaintiffs have asserted their ownership and possession in the suit property since the beginning. They have vehemently denied the sale deed executed in favour of defendants No. 8 to 11. Thus, such sale deeds as alleged by defendants do not need either cancellation or declaration. It is settled law that the sale deeds which are void-ab-initio, need not be assailed by cancellation or declaration.

4. Plaintiffs further contend that R.C.S No. 11/2016 was instituted by Sk. Mushtaq and the counterclaim was only set up against him. Sk. Mushtaq is not a party to the present suit. So, the principle of 'Res judicata' is not applicable to facts and circumstances of the present case. Rather, defendants have filed this application after six years of the institution of the present suit with the sole

intention to cause delay in the matter and to cause mental agony and loss to the plaintiffs. Thus, the present application deserves to be rejected.

**Submissions.**

5. Both the plaintiffs and defendants have reiterated the contentions of their respective pleadings in their extensive submissions. The learned advocate for defendants has also relied on the rulings, which would be discussed in the forthcoming paragraphs.

**Points for determination.**

6. In view of the rival pleadings and submissions of both the parties, following points arise for my determination, for which findings are recorded as per reasons given below -

<b>Sr No.</b>	<b>Points for determination</b>	<b>Findings</b>
1.	Whether the plaint is liable to be rejected on the ground that the relief of declaration has not been claimed by the plaintiffs in the present suit of perpetual injunction only ?	No.
2.	Whether the plaint is liable to be rejected on the ground that there is no cause of action in the present suit ?	No.
3.	Whether the plaint is liable to be rejected on the ground that present suit is barred by principles of res-judicata ?	No.
4.	Whether the plaint is liable to be rejected on the ground of improper valuation of the present suit which takes the present suit	No.

	beyond the pecuniary jurisdiction of this Court ?	
5.	What order ?	Application is rejected.

**Reasons.**

**As to point No.1 to 5.**

7. All the points are discussed together so as to avoid repetition and achieve brevity. In order to properly analyze the application for rejection of plaint, it becomes necessary to know the case of the plaintiffs. If the plaint below Exh.No.1 is perused minutely, then it appears that, the subject matter of the suit is the immovable agricultural property situated at Moharda. The old survey number of the property are 22/2 and 23/2 (area 2H 70R and 7H 98R). Both these survey numbers were culminated into Gat No.47 with area 10H 68R and potkharaba area of 40R. The boundaries of Gat No.47 is as follows.

Towards the east - Block of No.46 of defendant No.1 to 7.

Towards the west - - Block of No.17

Towards the North - Block of No.46

Towards the South - Block of No.17.

8. It is the case of the plaintiffs that, suit property belonged to the grand-mother of plaintiff No.1 to 3 who is Hasratbee. Then, suit property devolved upon her son Rasheed after her death. Thereafter, plaintiff No.4 being widow and plaintiff No.1 to 3 being children of Rasheed inherited the suit property, after his death and thus, became owners and possessors of the suit property.

9. Brother of defendant No.4 to 7-Mustak Shaikh instituted the civil suit bearing No.11/2016 against plaintiffs. Plaintiffs have also set up a counter claim in this suit. The civil suit of R.C.S No. 11/2016 pertains to the suit property of the present suit.

10. Plaintiffs further aver that, defendant No.1 to 7 were owners of land survey No.22/1 and 23/1. The revenue records such as Village Form No.7 and 12 and other record of rights also reflect the same. The measurement of the property is yet to be done. Hence, the exact situation of the property cannot be gathered. But what is being reflected is that survey No.22/1 and 23/1 has been converted into block No.46. However, the revenue record especially Village Form No.7 and 12 and mutation entry reflect the name of defendant No.1 to 7 in the suit property.

11. Plaintiffs further plead that, after the institution of R.C.S No.11/2016 and the counter claim in it, defendant No.1 to 7 came upon the suit property on 17.02.2016 and 18.02.2016 and demanded the possession of the suit property. But plaintiffs denied to do so. Defendants No.1 to 7 expressed their desire of selling the suit property in oral words.

12. Plaintiffs further aver that, defendant No.1 to 2 are brothers and defendant No.3 is nephew. They claim to be the owners vide registered sale-deed No.5131. But, this sale-deed reflects the number as block No.47 instead of block No.46. Defendant No.1 to 11 are not in possession of the suit property. It is the specific case of the plaintiffs that, block No.46 has been purchased by plaintiffs from their grand-father as per sale-deed

bearing No.2362 on 27.11.1987. This fact is also admitted in R.C.S No.11/2016. Thus, there is real apprehension that the defendant No.1 to 7 would dispossess the plaintiffs from the suit property. So, the plaintiffs have been constrained to institute the present suit claiming the relief of perpetual injunction against disturbance to the possession as well as alienation by sale, gift, hiba or any other modes.

13. It is a settled position of law that defence of the defendants is not be considered at the time of adjudication of the rejection of plaint under O.VII, r. 11 of C.P.C. But, as defendants have raised many contentions, hence, a reference is being made to the defence of the defendants. Defendant No.1 to 7 have resisted the suit by filing written statement below Exh.No.19. They contend that, the present suit has been instituted with malicious motive. The suit is bad for non-joinder of necessary parties. No map is present on record in support of the description of the suit property. Gat No.47 was formed out of Survey No.22 (area 26Acre 16 Gunthe). This area belonged to Shaikh Ahmad Shaikh Sandu and Shaikh Wajir Shaikh Amir. They sold an area of 14R to Hasharatbee by way of registered sale-deed No.551 dated 18.04.1970. Shaikh Ahmad Shaikh Sandu and Shaikh Wajir Shaikh Amir left was with an area of 12Acre 16Gunthe. This property was partitioned by metes and bounds. Then, their legal heirs succeeded to the suit property as per the mutation entry bearing No.1069. Defendant No.4 to 7 are sisters. Shaikh Mushtak Shaikh Ahmed transferred the property to Hashratbee as per mutation entry bearing No.398. Thereafter, Jan

kha transferred the suit property to plaintiff No.1 to 4 by way of registered sale-deed No.2362 dated 27.11.1987. Then, plaintiff No.1 to 4 sold the suit property to defendant No.8 to 11 as per sale-deed No.5131 dated 28.11.2014.

14. Defendants further plead that, defendant No.4 to 7 and their brother Shaikh Mushak are cultivating in 6Acre 11Gunthas on 10.01.2016. Defendant No.1 to 4 obstructed them in cultivation, so, R.C.S No.11/2016 was instituted.

15. They further contended that plaintiffs are not concerned with Gat No.46. They have denied the contention of the plaintiffs. They have admitted that, defendant No.1 to 7 are owners of old survey No.22/1 and 23/1. They have denied the rest of the contentions of the plaintiffs. Thus, they have contended that, the suit of the plaintiffs be dismissed with compensatory costs of Rs.50,000/-. Defendants have placed on record the plaint and written statement in R.C.S No. 11/2016 below Exh. No. 44.

16. In view of the rival contentions, it would be worthwhile to lay down the undisputed facts between the parties. It is an admitted fact that the registered sale-deed bearing No. 5131 dated 28/11/2014 has been executed in favour of defendant No.8 to 11. This sale-deed contains the recitals that the possession of the suit property has been transferred to defendant No.8 to 11.

**Relief of declaration/ Cause of action.**

17. The ruling of *Anathula Sudhakar V. P. Buchi Reddy (Dead) By Lrs & Ors. Appeal (Civil) 6191 of 2001* is relied upon by

the defendants. This ruling contains the following observations, which has been highlighted by the defendants.

*'11.3 Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction'.*

18. It is very true that the plaintiffs have sought the relief of declaration in the present suit. Rather plaintiffs have contended that the title of the plaintiffs is not under cloud as the sale deed executed in favour of the defendants contains the wrong property number. So, the sale deed is void-ab-initio. Hence, the rights and interests of the plaintiffs are intact and there is no need to prove their title. Per contra, the learned advocate for the defendants contended that if the relief of injunction is granted then what would be status of the parties vis-à-vis the suit property. Hence, there is no cause of action in favour of plaintiffs. Hence, the suit be rejected.

19. The moot question as to whether the relief of declaration was necessary to be claimed is also interlinked with the cause of action. In *Swamy Atmananda & Ors Vs. Sri Ramakrishna Tapovanam & Ors, Appeal Civil No. 2395/2000* placed on record by defendants, cause of action has been described as follows –

*'A cause of action, thus, means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the*

*defendant since in the absence of such act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded.'*

20. Keeping in mind the above observations, it is being found out that plaintiffs specifically rest their case on the sale deed bearing No. 2362 dated 27/11/1987 and on succession as legal heirs to the suit property of their predecessor-in-title. Thus, they contend to be in possession de-facto and de-jure possession of the suit property. Hence, they have sought protection of their possession in the suit property against the disturbance by the defendants. They also have sought to protect their suit property against alienation in view of the express desire of the defendants to dispose of the suit property due to the alleged misquoted property number in the sale deed bearing No. 5131 dated 28/11/2014 executed in favour of defendant No. 8 to 11. Then, the adjudication about the suit property in R.C.S No. 11/2016 is harped upon by the plaintiffs. Thus, prima facie, there exists cause of action in favour of the plaintiffs in view of the pleadings of the plaintiffs in plaint. At this juncture, the defence of the defendants or their pleadings would not be considered as per the settled position of law. Hence, at this point, it cannot be considered as to whether defendants are in possession or do they have better title. Rather, if the defendants intend to adjudicate upon the contention of cause of action, then it can be adjudicated thoroughly during trail after framing appropriate issue and considering the evidence adduced by both the parties.

21. Plaintiffs claim the they are the owners and possessors of the suit property. Thus, the burden of proof would lie on the

plaintiffs to prove their rights and interests in the suit property and accordingly, the issue No.1 framed below Exh. No. 29 takes care of the same. But whether there is a cloud created over the title of the plaintiffs cannot be ascertained at this juncture as for that purpose, the case of the defendants has to be considered, at least prima facie and for doing so, the written statement of the defendants and the documents relied upon by them has to be gone through. This is not allowed at the time of adjudication of application under O.VII, r.11 of the C.P.C. Rather, if the defence of the defendants and the documents are looked into, it would amount to mini-trial at this stage when the issues are framed and the plaintiffs are furnishing evidence and ready to undergo cross-examination. Rather, both the parties would get an opportunity to adjudicate on the contention of maintainability of the suit in the absence of the relief of declaration. Thus, an appropriate issue would be framed for that purpose. Apart from this, the ruling of *Anthula Sudhakar (supra)* also contains the following observations –

‘ 12. We may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that a defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant

*discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title'.*

22. In view of the above observations, firstly, it would have to be inferred as to whether the cloud is created over the title of plaintiffs and this can be done during trial after considering the pleadings, materials on record of both the parties. Thus, it would be very premature to comment on it. The opportunities for amendment or withdrawal of the suit cannot be extinguished or halted by rejecting the plaint, if at all, the relief of declaration is found to be necessary at a later stage.

### **Res Judicata.**

23. Apart from this, the contention of another civil suit bearing No. 11/2016 has also to be looked into thoroughly during trial for finding out as to whether the relief of declaration of title of plaintiffs in the suit property was essential or whether it has been exhausted. Even the aspects of the substantial and material issues in the former suit can be ascertained after considering the pleadings in R.C.S No. 11/2016. This would require some in depth scrutiny. Thus, the inquiry into the principles of 'Res Judicata' cannot be done so at this stage while considering the rejection of plaint, but it would be worthwhile, if an appropriate issue is framed and the pleadings and issues in both the civil suits are gone through.

**Challenge to the sale deed bearing No. 5131 dated 28/11/2014.**

24. Defendants have also raised the contention that the plaint has to be rejected as the plaintiffs have not claimed any relief regarding the sale deed bearing No. 5131 dated 28/11/2014. The discussion which has been done for relief of declaration of title of the plaintiffs in the suit property is aptly applicable to this contention as well and hence, the same is not repeated for avoiding prolixity. In short, whether the challenge to the sale deed bearing No. 5131 dated 28/11/2014 was essential can be adjudicated after framing appropriate issue and then, after considering the evidence of both the parties.

**Delay and bonafide of defendants.**

25. The learned advocate for the plaintiffs contended that, the suit is scheduled for evidence. The bonafides of the defendants is in question as to why defendants have come with this application after six years. However, the application under O.VII, r. 11 of C.P.C can be claimed at any stage of the suit as stated so in its provisions. So, the bonafides of the defendants cannot be questioned if they tried to utilize the provisions under C.P.C The ruling of ***Salim Bhai And Ors Vs. State of Maharashtra And Ors. Civil No.8518 of 2002*** placed on record below Exh. No. 48 by the defendants contains the observations that '*...The trial court can exercise the power under Order VII rule 11 C.P.C at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before conclusion of the trial....*'.

**Court fees.**

26. With respect to court fees the present suit has been instituted claiming the relief of perpetual injunction. It appears that, the suit has been valued at Rs.200/- for the purpose of court fees. There is no question about territorial jurisdiction in the suit as the suit property is situated within territorial limits of this Court. It is settled position of law that a suit is valued for the purpose of jurisdiction and court fees. As per Sec. 4 of the Suits Valuation Act, 1887, *the suit mentioned in the clause (c), (d), (e), (g), (i) or (j) of paragraph (iv) or paragraph (vii) in Section 6 or Art. 3, 4, 5, or 7 in Schedule I or clause (f) of Article 23 in Schedule II to the Maharashtra Court fees Act, 1959 relate to land or an interest in land of which the value has been determined by rules under the last foregoing section, the amount at which for purposes of jurisdiction, the relief sought in the suit is value shall not exceed the value of the land or interest as determined by those rules.*

27. Now, if the relief of the perpetual injunction is considered then, the suit appears to be valued at Rs.200/-. This valuation is done as per Section 6 iv(j) of the Maharashtra Court fees Act, 1959. Thus, there appears to be nothing wrong in the valuation. Rather, defendants have not demonstrated as to how the valuation of the present suit is improper for the purpose of Court fees.

28. However, defendants intend to adjudicate on the issue of improper valuation of the present suit and thus, under-payment of court fees. Hence, an appropriate issue can be framed for that

purpose and the opportunities can be provided to both the parties to adjudicate on the same. Hence, the plaint cannot be rejected.

**Improper description of the suit property.**

29. Another contention raise by the defendants is about the improper description of the suit property and about the denial of the ownership of the defendants. However, these contentions cannot be dealt with, at this juncture. Rather, appropriate issues can be framed about the same and these issues can be adjudicated during the trial.

**Rulings relied upon by defendants.**

30. Out of the rulings relied upon by the defendant, one of is *Arvindandam s. T.V.Satyapal and another, 1977 AIR 2421*. This ruling deals with the frivolous and vexatious litigation and imposing the costs under Section 35 of C.P.C. These guidelines are also important. However, at this juncture, no conclusion can be drawn as to whether the present suit is frivolous or vexatious. As discussed earlier, cause of action appears to have been existed in favour of the plaintiffs. Hence, this ruling is not helpful to the plaintiffs.

31. Defendants have also relied upon ruling of *Premji Ratansay Vs. Union of India 1994 SCC (5) 547*. This ruling is not helpful to the defendants as the facts stated in this ruling is distinguishable from that of the present case. In this ruling, the suit was instituted for declaration that the plaintiffs were successors-in-title to certain land of defendants No. 3 and 4. In this context, after adjudication during trial, it was observed that 'injunction would not be issued against true owner'. However, the facts of the instant case

as discussed earlier are different.

32. Defendants have also relied upon the ruling of *Dahiben Vs. Arvindbhai Kalyanji Bhanusali, Civil Appeal No. 9519 of 2019*. However, in this ruling, the application under O.VII, r. 11 of C.P.C was filed on the ground that the suit was barred by limitation. Hence, this ruling would not be helpful to the defendants. Apart from this, the facts of this case are different from that of the present case.

33. Thereafter, defendants have relied on the ruling of *Smt. Sushila Kumari Vs. Rama Stores, 2005 STPL 8507 Delhi*. However, in this ruling, an issue was framed regarding valuation of the suit for the purpose of Court fees and jurisdiction and the maintainability of the suit. However, fact of this ruling is different from that of the present case. Hence, this ruling is not helpful to the defendants.

34. Next ruling relied upon by the defendants is that of *Aman Harishkumar Vij Vs. Smt. Shantabai Anandrao Patil and others, Writ Petition No. 11432 of 2014*. This ruling deals with the challenges to the order of the Civil Judge, Junior Division wherein it has held that it has jurisdiction to try, entertain and decide the civil suit. However, the suit property was large property admeasuring totally about 49 acres corresponding mainly to the area occupied by open spaces, internal roads and common areas. The contentious issue was that as to whether it was 'agricultural property' or 'non-agricultural property' and accordingly, the valuation of the property

was questioned. However, facts of the present case are different and the contention of valuation has been dealt with in the preceding paragraphs. Hence, this ruling is also not helpful to the defendants.

35. Last ruling which is relied upon by the defendants is that of *Fabrica Da Igreja De N. S. De Milagres Vs. Union of India and Others, 1995 (1) Bom.C.R 588*. This ruling is being relied upon on the point that 'entries in martiz documents are only for purposes of collection of revenue and not the source of title, or proof of possession' and 'that the obligation as per Sec. 2(b), Sec. 34 and 38 of the Specific Relief Act, 1963'. However, these points are not relevant at this juncture. Hence, this ruling is not helpful to the defendants.

36. Coming towards the end, in view of the above observations and analysis, prima facie exists about the cause of action. The issue about the relief of declaration can be adjudicated during the trial. Similarly, the issue of improper valuation of suit can also be looked into, during trial after framing the appropriate issues. Other contentions raised regarding incomplete description of the suit property by defendants can also be looked into during trial.

37. Apart from this, the present application has been preferred by defendant No. 2 to 7. Defendant No.1 is dead. However, the legal representatives of defendant No.1 have been brought on record. But they have not preferred the present application. Reliance is being placed on the ruling of *Madhav Prasad Aggarwal & Anr. V. Axis Bank Ltd & Anr, 2019(4) ALL MR*

934 (S.C), wherein the Hon'ble Supreme Court has held that rejection of plaint against one of the defendants is improper, plaint has to be rejected as a whole or not at all, in exercise of powers under O.VII, r.11(d). Accordingly, this plaint does not deserve to be rejected under the provisions of O.VII r. 11 of the C.P.C and in view of the ruling of *Madhav Prasad (supra)*. Thus, the point No.1 to 4 are answered in the negative and in answer to point No.5, the following order is passed.

**ORDER.**

1. Application is rejected.
2. Costs in cause.

Date : 27/03/2023  
Place : Kannad

(Katkar Vijaya N.S.)  
2<sup>nd</sup> Jt. Civil Judge, Junior  
Division, Kannad.