

MHAU070041252025



R.C.S. No. 674/2025

Rajendra Tupe

Vs

Gorakh Tupe & Ors.

ORDER BELOW EXH.13

(Passed on 05 November, 2025)

The present application is filed by the defendants under Order VII Rule 11 (a) (b) of Civil Procedure Code, 1908. It is contention of the defendants that though he received the summons of the present suit, the copy of the plaint was not served along with it. It is further contended that he has no connection whatsoever with the subject matter of the suit and has been wrongly and unnecessarily impleaded as a party. According to Defendant No.4, there is no cause of action against him, and therefore, the plaint deserves to be rejected under Order VII Rule 11 of the CPC.

2. The plaintiff has filed his reply at Exh.27 and opposed the said application stating that the contentions of Defendant No.4 are baseless and that the plaint clearly discloses a cause of action against all the defendants including Defendant No. 4. The plaintiff has specifically stated in paragraph 6 of the plaint that all defendants, acting in collusion with each other, measured and marked the plaintiff's legally owned and possessed land, Gat No.82/2 admeasuring 82 R, with the intent to illegally construct a house thereon. The plaintiff has also mentioned that at the relevant time, Defendant No.4 was present on the spot and participated in such illegal acts.

3. Perused the say filed by plaintiff. He submitted that, in para No.6 of the suit it is clearly mentioned that, all defendants, acting in collusion with each

other, measured and marked the plaintiff's legally owned and possessed land, Gat No.82/2 admeasuring 82 R, with the intent to illegally construct a house thereon. Suit of the plaintiff is in respect of perpetual injunction therefore, as per the law cause of action for the suit is "Bundle of facts". Hence, it cannot be said that the plaint does not disclose a cause of action against Defendant No.4. Whether Defendant No. 4 was actually involved in the alleged acts or not is a matter of evidence, which cannot be adjudicated at this preliminary stage. The plaint, on its face, shows sufficient averments against all the defendants, including Defendant No. 4.

4. Considered the whole plaint and its pleading in which it is clear that plaintiff came before this Court for the relief of perpetual injunction. No any contentions due to which suit is not maintainable is not came before this Court. More so, the cause of action is bundle of facts, by considering the nature of suit, *prima facie* it appears that plaintiff has a cause of action to file the suit and this suit is filed for partition and plaintiff may claim partition at any period of time. Defendant's application is not maintainable and does not satisfy the conditions prescribed under the said provision. In view of above discussions I have reached to the conclusion that, there is no ground for rejection of plaint. Hence, the following order -

ORDER

Application is rejected.

Gangapur
Date : 03/10/2025.

(M.A. Shaikh)
Judicial Magistrate, First Class,
Gangapur [Court No.2].

CERTIFICATE

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

Name of the Stenographer : S.M. Shaikh
Court : Shri. M.A. Shaikh
2nd Jt. Civil Judge J.D., &
J.M.F.C. Gangapur.
Date of order : 03.10.2025
Order signed by the presiding officer : 03.10.2025
on
Order uploaded on : 03.10.2025