

HAU070071242025



Order Below Exh 12
Khatijabee Jafar Shaikh Vs. Naeem Jafar Shaikh

The present application is filed by defendants as per under order VII rule 11 (b and f) of Civil Procedure Code for rejecting the plaint.

Defendants contention -

2. It is the contention of defendants that, present suit is instituted seeking relief of partition and separate possession as well as per the declaration that the sale deed dt. 03.07.2024 is not binding on plaintiff. The parties in the present suit are from Muslims community. Hence Muslims partition law are applicable to them. Therefore, plaintiff ought to have brought suit under Muslim partition law. In Muslim law there is no concept of meet and bounds partition. As per Muslim law plaintiff ought to have brought suit as per administration of estate. Plaintiff instituted the present suit as per Hindu law of partition concept,. Therefore, suit is barred under order 7 Rule 11(f) of Civil Procedure Code.

3. The another contention of defendant is that the present suit is instituted seeking relief cancellation of sale deed dt. 03.07.2024. The consideration amount of sale deed is of Rs. 5,95,000/-. Hence plaintiff ought to have paid court fee on consideration amount of sale deed. Therefore, plaintiff not properly valued the suit and not properly paid court fee. Therefore suit is barred under Order 7 Rule 11 (b) of

Civil Procedure Code.

4. Plaintiffs say -

Plaintiff contested the application by filing say at Exh.16. It is the contention of plaintiff that, Only to prolong the suit present application is instituted. In respect of suit property Regular Civil Suit No. 640/2025 and Spl.C.S. 332/2025 was already subjudice before this court. In both of the suit order under Exh.5 is pending. Hence, only to prolong the order at Exh. 05 in present suit. Only to prolong the present suit is instituted. Plaintiff is seeking relief under Muslim Law. As per Muslim Law plaintiff is having right to sick relief of partition. So far as court fee is concerned it is contention of plaintiff that, plaintiff is not a party to the sale deed. Therefore, when plaintiff is not party to sale deed, then it is not necessary to paid court on consideration amount of sale deed. On above mentioned ground plaintiff prayed to reject the application.

5. Heard Ld Adv of plaintiff Shri S.K.Dalvi and Ld Adv of Defendant Shri D.E. Pankade.

6. On perusal of order VII Rule 11 of Civil Procedure Code, it appears that reasons of rejection of plaint are mentioned there. From the contentions in application, it seems that defendant urged to reject the plaint on two grounds. First one is, suit is not properly instituted as per Muslim Law. As parties are Muslim and therefore, suit must be instituted for administration of estate. The Second ground is, plaintiff is not properly paid court fee.

7. First of all it is necessary to scanned the plaint. In prayer clause of plaint plaintiff seeks relief of partition by meets and bounds. As per Muslim Law there is not concept of partition by meets and bounds. But on that ground only it is not proper to reject the plaint. The reason is, it is nowhere mentioned in Order 7 Rule 11 to reject the plaint on the ground of to some extent either by misinterpretation of law plaint is improperly drafted. On the contrary it is a duty of the Court to gather from the plaint, what plaintiff wants relief. Therefore, this is not ground to reject the plaint. Moreover, Order 7 Rule 11(f) not mentioned this ground for rejection of plaint.

8. The another contention of defendant is, plaintiff not properly valued the suit. He has not paid proper court fees. In fact, plaintiff ought to have paid court fees on valuation of the property mentioned in sale deed. On this point Ld. Advocate of plaintiff advanced an argument that, if plaintiff is not party to the sale deed then he has not required to pay the court fee on consideraiton amount mentioned in such sale deed. It is well settled principle of law that, in a suit for declaration of sale deed is not binding on plaintiff. Plaintiff who are not party to the instrument, seeking declaration of avoidance of sale deed would be govern by Secton 6 (iv)(j) of Maharashtra Court fee Stamp Act. In view of above situ ation it necessary to scanned the order 7 Rule 11 (b) of Civil Procedure Code. The order 7 Rule 11 (b) of Civil Procedure Code clearly speaks that where the relief claimed is under valued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so, reject the plaint. Therefore, question before this

court is, whether suit is under valued or properly valued. In present case, it is un- disputed that plaintiff is not a party to the said sale deed. Therefore, it is not necessary to the plaintiff to pay court fee on consideration amount mentioned in sale deed. Moreover, on perusal of plaint it transpires that plaintiff paid court fee on the relief of declaration. Therefore, I came to the conclusion that plaintiff properly paid the court fee to the suit. In view of above situation I am of the opinion that suit is not fall within any of sub rule of Order 7 Rule 11. Therefore, the application is deserves to be rejected. Accordingly, I have proceed to pass following order.

ORDER

Application is hereby rejected.

Date – 18/02/2026

Place - Gangapur

(R.N.Pathak)
Jt. Civil Judge (S.D.),
Gangapur

CERTIFICATE

I affirm that, the contents of this PDF file Judgment are same, word to word as per the original Order.

Name of the Stenographer : Balu Ashruba Age
Stenographer Grade 2

Court : CJSD Court, Gangapur.

Judgment date : 18/02/2026
Judgment signed by the
Presiding Officer on : 18/02/2026
Judgment uploaded on : 24/02/2026