



**ORDER BELOW EXH.29**

This is an application filed on behalf of defendant No.1 and 2 for rejection of plaint under Order-VII, Rule-11 of the Code of Civil Procedure, 1908 (here-in-after referred in short 'the code').

2. Those defendants submit that, the suit is instituted for a decree of partition and separate possession of share. However, the plaintiff does not have any relation with the defendants. A wife of defendant No.1 viz., Laxmibai died on 22/09/2018. Defendant Nos.1 to 3 are only surviving her legal heirs. The declaration to that effect is made by the Court while deciding Civil Application No.484/2018 and also issued legal heir certificate in their favour. Son of defendant No.1 and deceased Laxmibai namely Ramnath died on 08/05/1999. The plaintiff is not a daughter of deceased Ramnath. Her mother namely Godavari never married with deceased Ramnath. There is a judicial dictum in R.C.S.No.23/2009. In which, the subject matter of the suit were one and the same as arrayed in the present suit. Therein the court has passed a decree of perpetual injunction and declared owner to defendant No.3 and deceased Laxmibai. The said decree has been passed against the plaintiff. The issue in respect of relation has been answered in the negative against the plaintiff in the said suit. The judgment and decree passed in the said suit is not challenged, up till now. These material facts are suppressed by the plaintiff in the present suit. She has not come with clean hands. She does not

have locus-standy to institute the suit and claim share in the suit property. The pe-degree given in the plaint (Exh.1) is incorrect. Hence, these defendants have urged to allow application.

3. The plaintiff has opposed application by filing say on leaflet itself through her learned advocate. She submits that, the application is devoid of merit and baseless. The issue regarding legitimacy of plaintiffs has already been decided by the Court of Civil Judge Junior Division, Majalgaon in R.C.S.No.08/2009. Hence, she urged to reject application with costs.

4. Heard, the learned advocate Mr. V. B. Lavte for defendant No.1 and 2. He argued almost all the facts, which are pleaded in the present application, as mentioned supra. He has also invited my attention towards the record of case. None appeared on behalf of the plaintiff, for tending an argument, though reasonable time given. On considering the nature of suit and present application, it taken up for disposal on merits.

5. In view of aforesaid rival contentions of the parties, the following points arise for consideration and I have given my findings thereon with reasons recorded as under;

<b>Sr.No.</b>	<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
1.	Whether the plaint is liable to be rejected under Order-VII, Rule-11 of the Code ?	No.
2.	What Order ?	Application is rejected.

**REASONS****AS TO POINT NO.1:**

6. Perused application, say and record of the case, minutely. I have given thoughtful consideration towards an argument advanced by learned advocate for defendant Nos.1 and 2. The contents of application are supported by an affidavit of defendant No.1 namely Mohan Limbaji Pansare vide Exh.30.

7. In order to decide the application on proper perspectives, it would be appropriate reproduced relevant provisions of Order-VII, Rule-11 of the Code, which runs as under:-

**11. The plaint shall be rejected in the following cases:-**

- a) .....
- b) .....
- c) .....
- d) Where the suit appears from the statement in the plaint to be barred by any law;
- e) .....
- f) .....

These defendants have not challenged legality and validity of the suit on the ground of, it came to be filed without cause of action; the relief claimed is under valued or insufficient stamped; it's not filed in duplicate and not supplied copies of

plaint within 7 days from the date of order passed under rule-9 of this order. Thus, the provisions to that effect are not supra.

8. In view of aforesaid procedural law and the objection raised by these defendants, it requires to be considered where the suit appears from the statement in the plaint itself to be barred by any law?. Needless to say that, decision rendered in the connected civil matter wherein the same subject matter of the suit arising out of same parties or litigating on their behalf, is a matter of consideration on merit under the principle of res-judicata provided Under Section 11 of the Code. Thus, the whatever contention made under this application to that effect by those defendants or the plaintiff regarding outcome of either Civil M.A. No.484/2018 for R.C.S.No.23/2009 and R.C.S. No.08 /2009 respectively, is a matter of consideration on merits by extending an opportunity of being heard to both side. Thus, in my considered view, the objections raised by these defendants under this application cannot be a valid ground to reject plaint under the pretext of barred by the provisions of law.

9. It is well settled that, while deciding such application only plaint pleadings required to be taken in to consideration vide Order-VII, Rule-11(b) of the Code, as reproduced supra. In other words, the defendants pleadings or objections raised on their behalf challenging the validity of suits cannot be considered for rejection of plaint. On query being made by the court during the course of argument to that effect, the learned

advocate for these defendants has also fairly admitted such settled prepositions of law for consideration while deciding such application.

10. In view of foregoing discussion, I do not find substance in the objections raised under this application for rejection of plaint under Order-VII, Rule-11 of the Code. Thus, the plaint is not liable to be rejected. Hence, I do not agree with an argument advanced by the learned advocate for these defendants. So, I answer point No.1 in the negative.

**AS TO POINT NO.2:-**

11. In view of findings on point no.1, the application is liable to be rejected. Here, I would like to point out that, whatever observations made under this order will not affect merit of the case. In other words, all aspects are kept open for consideration on merits. As such, in answer to point no.2, I pass the following order.

**ORDER**

- 1] The application (Exh.29) is rejected.
- 2] The costs in main cause.

**Sd/-**

**(S. S. Budruk)**

Civil Judge Senior Division,  
Majalgaon.

Date : 17.06.2025.

## CERTIFICATE

The contents of above order is word to word correct  
in this pdf.

Dictated on : 17/06/2025.  
Typed on : 17/06/2025.  
uploaded on : 17/06/2025.

Sd/-  
(H.B.Suryawanshi)  
Steno-Gr.II  
C.J.S.D. Majalgaon.