

ORDER BELOW EXH. 17

This is an application filed by defendants under Order 7 Rule 11 (a) and (c) of the Code of Civil Procedure (hereinafter referred to as the "C.P.C" for brevity).

2] It is submitted that this suit is filed for declaration of ownership and possession of encroached area. The plaintiffs have not calculated the land revenue properly and upon the land revenue 80 times or eight hundred for jurisdiction of the Court and land revenue 80 times for the calculations of court fees. Such calculation was not made by plaintiffs for first relief and for claiming another relief of possession of encroached portion of land. Separate Court fee is required but plaintiff has paid only Rs.200/- Court fees without land revenue calculations. Hence, for want of sufficient Court fees under Order VII, Rule 11 (a) and (c) of C.P.C. the present suit is liable to return of plaint on given proviso. Hence, prays to reject the plaint.

3] Plaintiffs have filed their say at Exh.21 and resisted this application. According to them, plaintiffs have filed suit for declaration of ownership and for possession of encroached portion out of S.No.57, 58 and 67. The defendants have filed vague application. Defendants have not stated about provision of law and the amount of court fees required to be paid by plaintiff in application. Defendants have filed this vague application with intent to prolong the matter. As per section 6(v) of The Maharashtra Court fees Act, 1959, they are ready to pay 80 times of revenue of suit lands. They are ready to deposit remaining Court fee amount of Rs.148. Hence, prays to reject the application.

4] Following points arise for my determination and my findings thereon are as under -

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
i)	Whether this application deserves to be allowed?	Yes. Partly.
ii)	What order?	As per final order.

- REASONS -

5] Heard both sides. Both Ld. Advocate reiterated as per the contentions of their respective application and say.

As to point Nos. 1 and 2:-

6] As per order VII, Rule 11 of the Code of Civil Procedure, 1908, “ *the plaint shall be rejected in following cases-*

(a) where it does not disclose a cause of action;

(b) 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;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) Where the plaintiff fails to comply with the provisions of Rule 9;.....”

7] Perused the application supported with affidavit and say of plaintiffs. Perused the record of file. It appears that, suit of the plaintiff is for declaration of ownership and for possession of encroached portion of suit properties. It prima facie appears that, plaintiffs have specifically pleaded about cause of action in plaint para no.8. Hence, it could not be said that plaint has not discloses cause of action as per Order VII, rule 11(a). It is the case of plaintiff that plaintiffs and defendants are resident

of same village and co-owners in S.No.57, 58 and 67 i.e suit properties. Defendants have encroached in S.No.57 to the extent of 00.04R portion, in S.No.58 to the extent of 00.03R and in S.No.67 to the extent of 00.05R portion. Hence, he prayed for declaration that plaintiffs are owners of suit properties with relief of possession of encroached portion of suit properties. As per section 6 (d) of the Maharashtra Court Fees Act, 1959, in suits for declaration in respect of ownership -one fourth of ad valorem fee leviable for a suit for possession on the basis of title of subject matter, subject to the minimum fee of one hundred rupees and as per section 6 (v) of the Maharashtra Court Fees Act, 1959, in suit for possession of land where the subject matter is land is held on settlement for a period not exceeding thirty years and pays the full assessment to Government -a sum equal to forty times the survey assessment, b) where the land is held on permanent or for any period exceeding thirty years and pays the full assessment to Government -a sum equal to eighty times the survey assessment shall be paid.

8] The plaintiff claims declaration that they are owners of suit lands and also claimed possession of encroached portion of suit properties. For such relief, The Maharashtra Court Fees Act,1959 has made specific provision i.e. Section 6 (d) and 6 (v). Hence, plaintiff will have to value his suit as per this provision and will have to pay Court fees as per this valuation.

9] The sum and substance of above discussion is that defendants are succeeds in showing that the suit is not properly valued and requisite Court fees is not paid. In spite of this, the plaint could not be straightway rejected on this ground. Plaintiffs will have to be given opportunity to correct valuation and pay proper Court fees. As such, this application deserves to be allowed. Hence, I pass the following order :

ORDER

- I) Application (Exh. 17) is partly allowed.
- II) Plaintiff is directed to correct valuation of his suit as per Section 6(d) and 6(v) of Bombay Court Fees Act, 1959 and pay necessary Court fees on or before next date of hearing.
- III) Costs in cause.

Place : Kaij
Date : 30/07/2025

(**P. V. Chavan**)
2nd Jt. C.J.J.D. Kaij.

CERTIFICATE

I affirm that the contents of this PDF file are word to word as per original judgment/ order.

Dictated on : 31.07.2025

Transcribed on : 31.07.2025

Checked & signed on : 31.07.2025

Sd/-

(P. P. Raut),

Stenographer Grade-3,

Ct. of CJJD and JMFC, Kaij.