

**ORDER BELOW EXHIBIT 24.**

[Passed on 12/12/2019.]

Perused the application and say [exh. 26]. Heard learned advocate for the defendant and learned advocate for the plaintiff. Considered the submissions made at bar.

**02].** Present application has been moved on behalf of the defendant for rejection of the plaint. According to him, the plaintiff has instituted the suit for relief of declaration, permanent mandatory injunction with removal of encroachment and possession. But, the suit is not instituted within limitation and it is barred by law of limitation. So also, the plaintiff has under-valued the plaint. He has prayed for possession of the suit-property, so full court fee is required to be paid. Further, the plaintiff is averring that the suit property is ancestral property and thus, all coparceners are required to be added as party and as they are not made parties to the suit, the suit is bad for their non-joinder. On these grounds, he has prayed that the plaint is required to be rejected. So, he has prayed for allowing the application.

**03].** *Per contra*, the plaintiff has resisted the application on the count that the application is not tenable and it is filed with a view to prolong the matter. Further, the suit is now fixed for his cross-examination. The defendant has made encroachment over the suit -property on 01/01/2017, which is owned by him and his brother *Pramod* and the defendant is having no concerned with it. So, the suit is very well within limitation. As far as valuation of the suit is concerned then he has paid proper Court fee as per the reliefs prayed by him. Further, the suit-property is owned by the

plaintiff and his brother and so the suit is tenable. So, all these grounds, he has prayed for rejection of the application.

04]. On basis of the assertions and contentions, following points arise for my determination whose findings are given thereon for the reasons discussed thereafter.

Sr. No.	Points	Findings
[1].	Whether the plaint is liable to be rejected?	No.
[2].	What order?	Application is rejected.

### Reasons

05]. It would not be out of milieu to state here Order VII [7] Rule 11 of the Code of Civil Procedure, 1908 [hereinafter 'the Code' for sake of brevity] runs as under:-

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

- a] where it does not disclose a cause of action;*
- b] where the relief claimed is undervalued, 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.*

*Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite*

*stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.'*

**06].** So, considering the above said provision, it is required to be seen whether the relief prayed by way of the application, can be granted or not?

**07].** There is no dilemma that for consideration of the application for rejection of the plaint, the allegations *cum* contentions made by the defendant in his written statement or in the application for rejection of the plaint should not be the basis. For the said purpose, only the plaint as a whole, has to be considered. In order to deal with stance of the defendant, it is required to be seen for which relief, the plaintiff has instituted the suit. Plaint is making it discernible that the plaintiff has instituted the suit for removal of encroachment, recovery of possession, permanent mandatory injunction and declaration.

**08].** Now, first stance of the defendant is that the suit is not instituted within limitation and it is barred by law of limitation. From the plaint, it appears that the plaintiff is coming with averment that the defendant has made encroachment over the suit-property by making construction of lavatory over there on 01/01/2017. The suit is instituted on 18/12/2017 and relief prayed is to declare that the plaintiff and *Pramod* are owners of the suit-property. It would not be out of milieu to state here that

period of limitation for relief of declaration is provided under article 58 of the Indian Limitation Act, 1963 [hereinafter 'the Act, 1963' for sake of brevity] which provides that to obtain any other declaration, the suit be filed within 3 [three] years when the right to sue first accrues and considering the same, it is well within limitation.

**09].** Moving towards second stance of the defendant then as per him, as the plaintiff has prayed for possession of the suit-property, so full court fee is required to be paid. In this regard, it is apposite to state here that as per Rule 11 [b] Order VII [7] of the Code, where the relief claimed is undervalued 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, the plaint is required to be rejected. So, if the suit is not properly valued then opportunity is required to pay the deficit court fee and if within time given, he fails to pay the same then the plaint will be rejected. So, at this stage, the plaint will not be rejected only on the count that the plaintiff has not valued the suit properly.

**10].** Finally, reverting to third distance of the defendant then as per him as the plaintiff is averring that the suit-property is ancestral property, all coparceners are required to be added as party. In this context, it would not be out of milieu to state here that the plaintiff is not praying relief of partition. In other words, in a suit for partition, all coparceners are required to be made party. In present suit, the plaintiff is coming with averment that the defendant is not having any right with the suit-property. So considering the nature of the suit, all coparceners are not required

to be made as party.

11]. It is apt to state here that issues [exh. 17] are already framed and issues in respect of non-joinder of necessary party and valuation of suit, are framed. So, after adducing extensive evidence by both sides and after full fledged trial, said facades will be answered. So, at present stage, standpoints raised by the defendants is appearing devoid of merits. Hence, the relief prayed by way of the present application cannot be granted for above said reasons and as such, the application is liable to be rejected and as such, I proceed to pass the following order.

### **Order**

[1]. Application is hereby rejected.

[2]. Matter to proceed further according to Law.

**Date:- 12/12/2019.**

**Place:- Jalgaon Jamod.**

**Civil Judge Junior Division,  
Jalgaon Jamod.**

### Certificate

I affirm that, the contents of this PDF are same words for words,  
as per the original order.

Name of Stenographer : Mr. A. A. Tholbare.  
Name of Court : J.M.F.C. First Court Jalgaon Jamod.  
Upload on : 16/12/2019.