

MHGA090006132024



IN THE COURT OF JT. CIVIL JUDGE (JUNIOR DIVISION), CHAMORSHI
(Presided Over by S. A. Bhaisare)

Reg.C.S. No. 54/2024

PRAKASH SOMAJI SONTAKKE ... Plaintiff

-VERSUS-

ISHWAR MAROTI NAWALE ... Defendant

ORDER BELOW EXH. 28

(Passed on 31st January, 2026)

Defendant no. 2 in the counter-claim has filed present application under the provisions of Order VII, Rule 11 of the Code of Civil Procedure, 1908. According to him, the defendant no.2 in counter-claim is not a party in the suit. The counter-claim should be directed against the plaintiff in the suit only. No new party can be added in counter-claim. Thus, the plaint of counter-claim must be rejected.

2. Plaintiff in counter-claim has filed his say at Exh.19 and have denied all the contentions of defendants. He argued that defendant no.2 is not the sole party in the counter-claim. The relief is also claimed against defendant no.1. Defendant no.2 is in collusion with defendant no.1. Considering the dispute, facts and circumstances of the case, the suit cannot be effectively decided unless and until defendant no.2 is added in the suit in the ends of justice. Hence, the application may kindly be rejected.

3. Heard. Perused the record.

4. The main object of the Order VII, Rule 11 of the Code of Civil Procedure, 1908 is to reject the plaint at the very beginning that are of a frivolous, vexatious and improper in nature, thus saving judicial time and resources. The provision is exhaustive in nature and provides for the rejection of plaint on following grounds:-

- 1) where it does not disclose a cause of action;
- 2) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within time fixed by the court, fails to do so;
- 3) where the plaint is insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp within time fixed by the court, fails to do so;
- 4) where the suit appears from the statement in the plaint to be barred by any law;
- 5) where it is not filed in duplicate;
- 6) where the plaintiff fails to comply provisions of Rule 9.

5. It is a settled law that while considering the provisions of Order VII Rule 11 of CPC, the Court has to look into the averments made in the plaint only. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order VII Rule 11 CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order VII Rule 11 CPC to the exercise of power of rejection of plaint have to be

strictly adhered to.

6. The counter-claim is for declaration, mandatory injunction and perpetual injunction. The plaintiff has claimed that the defendant no.2 in counter-claim is not a party in the original suit. Admittedly, the plaintiff in the suit has not added Vimalbai as a party. Merely because the plaintiff in counter claim has claimed relief against a new party, it is not a ground to reject the plaint at threshold. Also, there is no provision in law that the plaint can be rejected on the ground of mis-joinder of a party. So also, the plaint cannot be rejected against some of the defendants. The plaint can be rejected either entirely or not at all. There cannot be a piece-meal or part rejection of plaint. In view of aforesaid discussion, the application is liable to be rejected. Hence, the following order:

ORDER

1. The application below Exh. 28 is rejected.
2. No order as to costs.

Sd/-

Date : 31.01.2026.
Place : Chamorshi

(S.A. Bhaicare)
Jt. Civil Judge, (Jr.Dn.),
Chamorshi