

MHKO090002562017

**ORDER BELOW EXH. 28 IN REG. CIVIL SUIT NO. 151/2017**

1. The present application is filed under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint. It is averred in the application that the plaintiffs are suppressed material facts and therefore, for this reason, the plaint is liable to be rejected.
2. According to the defendants, the suit properties are already partitioned, mutation entries are sanctioned in this regard and therefore, in such circumstances, the present suit for partition and separate possession is not at all maintainable. It is further averred in the paragraph No. 7 in the application that the plaintiffs are deliberately not included certain properties in the suit. The properties are at village Kadave and Hukkeri, which are in the name of Dattatraya, are deliberately omitted. All these facts are suppressed by the plaintiffs. The plaintiffs are even suppressed transfers effected by their father and Dattatraya. Therefore, considering all these facts, the plaint is liable to be rejected under Order VII Rule 11 of the Code of Civil Procedure.
3. The question before me is, whether the plaint can be rejected for suppression of material facts. In this regard, Order VII Rule 11 of the Code of Civil Procedure is to be

seen. It is not specifically mentioned in Rule 11 that the plaint can be rejected for suppression of material facts. Therefore, the application is liable to be rejected on this count itself.

4. Further, even if it is presumed that certain facts are suppressed by the plaintiffs, the Court have to see, whether these facts are material one and on which the plaintiff can be completely non suited. The previous partition cannot be presumed by the court just because the defendants are contending it. First of all, previous partition is to be proved by the defendants. If it is proved, then the plaintiff cannot claim relief of partition. However, before proof of this partition, suit filed by the plaintiff cannot be rejected under Order VII Rule 11 of the Code of Civil Procedure. Similarly, it is to be seen, in what circumstances the transfers averred in paragraph No. 7 were effected. Hence, before deciding this application, it is to be seen, whether the parties were joint or separate and unless and until this is proved, the plaint cannot be rejected. Hence, I pass the following order-

ORDER

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

Date – 22.03.2022

(G. V. Deshpande)
Civil Judge Senior Division,
Gadhinglaj