

**Order below Exh.17 In R.C.S. No.406 of 2024**

Passed on this 17<sup>th</sup> day of February, 2026)

**Gunaji & Ors. Vrs. Khandu & Ors.**

CNR NO.MHLA060010872024

This is an application filed by defendants No.2 to 7 for rejection of plaint as per Order 7 Rule 11 (a) & (d) of the Code of Civil Procedure.

**2.** Perused the application, say of the plaintiff filed overleaf. Perused the plaint.

**3.** It is the averment of defendants No.2 to 7 that plaintiff No.1 and defendant No.2 are step brothers interse. The partition among the plaintiff, defendant No.2, their father deceased Mahadu and real mother of plaintiff No.1 viz Bhimabai had been effected 12 years prior to 1986. In that partition, plaintiff No.1, Mahadu and mother of plaintiff No.1 Bhimabai got share in Gat No.139/3 adm. 81 R situated at village Dhalegaon, Tq.Ahmedpur. After death of Mahadu, plaintiff No.1 and defendant No.2 started obstruction to the possession and ownership of Bhimabai. Hence, Bhimabai had filed one suit bearing RCS No.217/1986 against plaintiff No.1 and defendant No.2 in the court of Civil Judge Junior Division, Ahmedpur praying for declaration of ownership and perpetual injunction in respect of land Gat No.139 adm. 81 R. In that suit plaintiff No.1, defendant No.2 and Bhimabai arrived at compromised, they filed compromise deed and admitted partition amongst amongst them effected 12 years prior to 1986. Plaintiff No.1 and defendant No.2 admitted ownership and possession of Bhimabai over the land in Gat No.139 adm. 81 R. As per

the said compromise deed after death of Bhimabai, the aforementioned land was agreed to go to plaintiff No.1. The terms and conditions of that agreement are binding on the plaintiff and the defendant. They are estopped from denying those contents of the compromise deed. All the members of the family are in possession of their respective shares as per the partition but revenue record was not mutated accordingly. Therefore, after death of Mahadu the names of plaintiff No.1, defendant No.2, Bhimabai came on record as the successors of deceased Mahadu to the lands survey No.96, 97, 45, 46, 51 and 139 situated at village Dhalegaon vide mutation entry No.336 and immediately mutation entry No.337 came to be sanctioned since partition in respect the aforesaid lands was already effected. Since the partition took place 50 years ago and the plaintiff admitted the partition and ownership of Bhimabai in compromise decree in RCS No.217/1986, there is no cause of action accrued to the plaintiff to institute this suit. The suit is not within limitation. Hence, requested to reject the plaint.

**4.** The plaintiff contented that no partition by metes and bounds has been effected among the plaintiff and the defendants. The suit properties are the ancestral and joint family properties. The plaintiffs have their share in the suit properties. Hence, there is no limitation to this suit. The decree in RCS No.217/1976 is false and it is not the final judgment of the Court. Therefore, the plaint is not liable to be rejected on that ground. Hence, requested to reject the application.

**5.** Heard both the sides.

6. Ld. Advocate for the plaintiff and defendant No.1 argued as per the application and the say.

7. The application is moved on the grounds that firstly there is no cause of action to institute the suit and secondly the suit is hit by the principal of res-judicata. Para No.9 of the plaint discloses cause of action. This court cannot inquire into truthfulness of the cause of action while deciding application for rejection of plaint. If the plaint discloses cause of action then the suit is not liable for rejection as per Order 7 Rule 11 (a) of the Code of Civil Procedure.

8. As per the settled law, inquiry into the question of applicability of the principle of res-judicata cannot be done under Order 7 Rule 11 of the C.P.C. Specifically, in the context where the plaintiff alleges that decree to have been obtained fraudulently. The question of applicability of the principle of res-judicata is not expected under Order 7 Rule 11 of the C.P.C. as it is mixed question of facts and law. The same is with the bar of limitation. Hence, the application for rejection of plaint on the grounds of non disclosure of cause of action, res-judicata and limitation are devoid of merits. Thus, the application is liable to be rejected. Hence, I pass the following order;

### **ORDER**

The application is rejected.

Place: Ahmedpur.  
Date:- 17.02.2026.

**(Swanandi D. Wadgaonkar)**  
Jt. Civil Judge, J.D., Ahmedpur.