

MHLA110005402016



**ORDER BELOW EXH.76 IN**  
**REGULAR CIVIL SUIT NO.439/2016**  
**BASHIR VS. NAZAM & ORS.**

1. This is an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (in short 'C.P.C.') for rejection of plaint.
2. Perused the application and reply thereon. Heard Ld. Counsel for the both sides.
3. Ld. Counsel for defendants submitted that, plaintiffs have filed this suit for declaration in respect of 2 H 70 R land out of Gat No.54 and 55 situated at village Bevnal. The predecessor of plaintiffs had filed RCS No.191/80 in respect of land in Survey No.68 which was dismissed on 29/11/1997 and thereafter First Appeal i.e. RCA No.90/98 was also dismissed by Court on 05/08/2005. Thereafter, M.A. No.37/2005 filed by the Appellant was also rejected on 03/12/2009. Besides the same, Second Appeal i.e. Writ Petition No.410/2010 was also rejected on 11/12/2019. The Civil Revision Application No.25/2021 filed by the appellant was also disposed of on 22/11/2024 with direction to file fresh application invoking the provision of C.P.C. the suit is not maintainable under the provision of Section 11. Therefore, it is liable to be rejected under order VII Rule 11 of the Code of Civil Procedure. Hence, it is prayed to reject the plaint.
4. Plaintiffs have resisted the application and contended that, defendants are trying to transfer the suit property and dispossess the plaintiffs. Defendants are filed this application only

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to prolong the matter the avoid the court proceeding. Defendants have filed this application on the ground of res-judicata which is already decided by the Court. The earlier suit was decided before the implementation of the consolidation scheme. There was family settlement before the consolidation scheme and therefore the boundaries of the suit are different and cause of action is also different. There is no merit in the application. Hence, it is prayed to reject the application.

5. The following points arise for my determination to which I have recorded my findings for the reasons stated as under:

<b><u>Sr.No.</u></b>	<b><u>Points</u></b>	<b><u>Findings</u></b>
1)	Whether the suit is maintainable?	: In the Affirmative.
2)	What order ?	: As Per Final Order.

### **REASONS**

#### **AS TO POINT NO.1:-**

6. Before scrutinizing the plaint and averments, it will be proper to have glance at the settled law regarding the Order VII Rule 11 of the Code of Civil Procedure, 1908. Order VII Rule 11 of the Code of Civil Procedure, 1908, makes it clear that relevant facts which need to be looked into for deciding the application thereunder are the averments in the plaint. The averments in the written statement are immaterial and it is the duty of the court to scrutinize the averments in the plaint. At this stage, pleas taken by the defendant in the written statement are wholly irrelevant while scrutinizing the plaint averments. It is bounden duty of the Court to ascertain the material for cause of action. It is also well settled that question of limitation is mixed question of law and facts and it

needs to be go to trial giving parties to lead evidence and it cannot be decided as threshold of the suit and Cause of action is bundle of facts which plaintiff must prove in order to succeed.

7. It is also important to note that, the plaint can be rejected only on the ground under Order VII Rule 11 if the plaint does not disclose a cause of action, if it is undervalued, if it is not sufficiently stamped, if the plaint is barred by any law, if plaint is not filed in duplicate and if the copies of the plaint are not provided.

8. Ld. Advocate for defendant sought for rejection of the plaint on the ground that previous suit bearing RCS No.191/80 filed by the predecessor of the plaintiffs regarding the Survey No.68 which is ultimately converted in to Gat No.54 and 55 after the implementation of the consolidation scheme. The said suit and appeal filed against the judgment were dismissed and Second Appeal was also rejected.

9. However, it is pertinent to note here that, a plaint cannot be rejected on the ground of res-judicata under Order VII Rule 11(d) of the C.P.C. This is because of the principle of res-judicata requires and examinations of the pleading, issues and decision in previous suit which is beyond the scope of Order VII Rule 11(d) of the C.P.C. As already stated in abovesaid paras that, Order VII Rule 11(d) of the C.P.C. only considers the statements in the plaint. Therefore, plaint cannot be rejected on the basis of res-judicata. However, the issue whether the suit is maintainable or not is already framed by the Court and the same will be decided after the trial. Therefore, the suit is maintainable. Hence, I answer Point

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No.1 in the affirmative.

**AS TO POINT NO.2:-**

10. In view of the aforesaid discussion, I hold that the application is liable to be rejected. Hence, in answer to Point No.2, I pass the following order:

**ORDER**

- 1) Application at Exhibit No.76 is hereby rejected.
- 2) Suit to proceed further.

Nilanga  
Dt.:- 06/03/2025

(Smt. V. D. Bhosale)  
Jt. Civil Judge Sr. Dn., Nilanga.