

**ORDER BELOW APPLICATION EXH.NO.62**

(Passed on this **08<sup>th</sup> Day of December, 2023**)

[01] The defendant No. 04 and 08 made this application **Under Order VII Rule 11(a), (c) and (d) of Civil Procedure Code, 1908 (Act No. V of 1908)** to reject the plaint on the ground that, (a) no cause accrued and (b) suit is barred by law.

**Contents of the application :-**

[02] The plaintiff contended in paragraph No.04 of the plaint about previous partition in the year 1995. In accordance with said partition name of the plaintiff is mutated to revenue record. Plaint paragraph No.03 'C' and 'L' property is self acquired property of the defendant No.08. The plaintiff never asked for partition to defendant No.04 and 08. The plaintiff did not mention properties situated at Jainagar in his name and in the name of son of defendant No.02 and defendant No.04. Hence, the suit is not tenable for want of cause of action, for previous partition and for non joining whole property in the suit.

[03] The plaintiff filed Say overleaf. He submitted that, previous partition was not by metes and bounds, it was effected to take advantage of Government Schemes. All properties are purchased out of income of nucleus of the family. He is ready to include left out properties in the plaint. Hence, the plaintiff prayed for rejection of the application.

[04] Heard **Ld. Adv. Shri. A. T. Birajdar** for the defendants and **Ld. Adv. Shri. G. V. Suryawanshi** for the plaintiff.

[05] Upon perusal of contents of the application and Say, following points crop up for my consideration. I have recorded my findings against each point as below.

Sr. No.	Point	Findings
01.	Is the plaint liable to be rejected under <u>Order VII Rule 11(a)(c) and (d) of the Civil Procedure Code, 1908</u> being barred by law?	No.
02.	What order?	Rejected.

### REASONS

#### As to point No.01 :-

[06] **Ld. Adv. Shri. Birajdar** submitted that, there is previous partition, whole properties are mentioned, suit is barred by limitation from 1995.

[07] **Ld. Adv. Shri. Suryawanshi** submitted that, partition which took place in 1995 was not by metes and bounds, it was mere arrangement of properties to take advantage of Government Schemes. The plaintiff is ready to mention properties which are left out.

[08] Pleadings in Civil Suit are governed by **Order VI to VIII of the Civil Procedure Code, 1908.** Order VII specifically relates to contents of plaint. Order VIII specifically relates to contents of written statement, set off and counter claim. Order VI is general provision which governs pleadings. It means Order VI is applicable to the plaint Order VII as well as written statement Order VIII.

[09] Perused the plaint, the application and Say. The plaintiff sought partition and separate possession of suit property. Hence, only the contents of the plaint are material for deciding an application made **Under Order VII Rule 11(a), (c) and (d) of Civil Procedure Code, 1908.**

[10] This Court has jurisdiction to try the suit for partition and separate possession in view of Hindu Law and **Section 09 of Civil Procedure Code, 1908.**

[11] The plaintiff specifically mentioned that, partition is effected in the year 1995 to take benefit of Government Schemes. Was that partition by metes and bounds? can be decided only after trial. The limitation to institute suit will not commence from 1995. The plaintiff is ready to include properties which are left to be included. There is cause of action, suit is within limitation and plaint cannot be rejected for non inclusion of all properties of the family.

[12] In suit of partition and separate possession both parties sail in the same boat. It means in the suit of partition and separate possession every plaintiff is a defendant and every defendant is a plaintiff. It means defendant in his written statement can also describe the left out properties and seek partition. The defendants cannot claim the relief of rejection of plaint for non inclusion of whole properties. However, the suit can be dismissed for non inclusion of whole properties. The plaintiff is ready to include the left out properties as mentioned by the defendants in the application. Hence, in the interest of justice the plaintiff is advised to include whole properties in the plaint to seek partition and separate possession. In short, the plaint is not liable to be rejected. Hence, I answer **point No.01 in the Negative**. Hence, in order to answer **point No.02**, I proceed to pass following order.

### ORDER

01. The application **Exh.No.62** made by the defendants **Under Order VII Rule 11(d) of Civil Procedure Code, 1908** stands rejected with costs.
02. The plaintiff is directed to include whole properties of the joint family in the plaint.

(Subhash L. Phule)

Date : 08.12.2023.

Joint Civil Judge, Junior Division, Ausa.

Place : Ausa.

District Latur.