



ORDER BELOW EXHIBIT NO.9

1] Defendants Nos. 2, 5, 6, 8 to 11 have filed the present application seeking rejection of the plaint vide order 7 rule 11 of the Civil Procedure Code.

2] It is contended that the reliefs sought by the Plaintiffs, which purport to restrict public access to an open space, constitute an impermissible infringement upon the fundamental rights of both the Defendants and the general public. The Plaintiffs have deliberately avoided proper valuation of the suit property and payment of requisite court fees by couching their claims as a negative declaration. This technical defect alone, they argue, warrants rejection of the plaint.

3] Regarding the merits, the Defendants assert that the Hanuman Mandir in dispute was lawfully constructed in 2002 in collaboration with Utkarsh Gruha Nirman Sahakari Sanstha Ltd., Nagpur, and has since functioned as a public religious site. They maintain that the Plaintiffs, being local residents, must have been aware of the temple's existence and activities for years, making their claimed cause of action in 2024 a transparent fabrication intended to circumvent the law of limitation under Article 82.

4] The Defendants further submit that the present suit represents a misuse of process, as any genuine dispute would properly lie before the

cooperative court under Section 91 of the MCS Act, 1960. On these grounds, they pray for rejection of the plaint with compensatory costs of Rs. 50,000/- per Defendant.

5] The Plaintiffs have filed reply at Exh.12 opposing the application in its entirety. They maintain that the application is fundamentally misconceived and represents nothing more than an attempt to obstruct the judicial process. The Plaintiffs categorically deny all allegations of defective pleading or improper valuation. They assert that their claims have been properly particularized and that the suit has been instituted within the applicable limitation period.

6] Regarding jurisdiction, the Plaintiffs contend that the present suit is perfectly maintainable before this Court and that the Defendants' reliance on the MCS Act is misplaced. They characterize the Defendants' application as a transparent effort to avoid adjudication on merits. The Plaintiffs accordingly pray for dismissal of the application with costs.

7] Heard both side. Perused the record.

8] At the outset, it must be emphasized that the present matter constitutes a civil dispute concerning property rights between private parties. Fundamental rights under Articles 19(1)(d), 25, and 26 of the Constitution operate as safeguards against State action and cannot be invoked in private litigation absent State involvement. The reliefs sought are declarations and injunctions regarding specific proprietary

rights over the suit property which fall squarely within the ordinary civil jurisdiction of the court.

9] Regarding the contention of applicability of the Maharashtra Cooperative Societies Act, 1960, the dispute fundamentally engages substantial questions of title and possession that transcend the limited scope of Section 91 of the MCS Act. The nature of the controversy, involving complex questions of proprietary rights, places it firmly within the domain of civil courts rather than cooperative tribunals.

10] The claim for negative declaration constitutes a legally recognized form of relief, and the valuation has been properly computed in accordance with the Court Fees Act. The Defendants' bare allegation of deliberate undervaluation remains entirely unsupported by any tangible evidence, rendering it unsustainable in law.

11] A careful examination of the pleadings reveals that the cause of action is both recent and continuous in nature, crystallizing on 05/04/2024 when the Defendants allegedly attempted to illegally occupy the disputed property. This date marks the specific infringement of the Plaintiffs' rights that triggered the current litigation. Consequently, the suit has been instituted well within the limitation period. The Defendants' reference to events from 2002 is irrelevant to the present cause of action.

12] The cumulative effect of these considerations demonstrates that the Defendants' objections appear to be technical in nature rather than substantive.

13] The defendants have relied upon the judgment in **Indian Evangelical Lutheran Church Trust Association v. Sri Bala & Co.**, in Civil Appeal No. 1525 of 2023 dated 08.01.2025 which dealt solely with the limitation period for re-filing a suit (under Order VII Rule 13 CPC) after an earlier plaint was rejected for non-payment of court fees, whereas the Defendants here seek rejection on entirely distinct grounds that is violation of fundamental rights and maintainability under the MCS Act. None of which were addressed in the cited judgment, which focused only on procedural delay in a time-barred re-filed suit. Hence, the citation is not applicable to the present matter.

14] The defendants have further relied upon the judgment in **Vijay Katara v. Principal Secretary** (Writ Petition No.41978 of 2024) which deals with a writ petition under Article 226 wherein the Hon'ble High Court upheld a citizen's right to hold a religious event under Article 25, quashing an administrative order that revoked permission without hearing; this precedent is not relevant to the present civil suit, as it neither addresses private property disputes nor supports the claim that fundamental rights can override civil court proceedings or justify plaint rejection under Order VII Rule 11(d) CPC.

15] The defendants have also relied upon the judgment in **Nikhila Divyang Mehta v. Hitesh P. Sanghvi** (2025 SCC onLine SC 779) which solely addresses the rejection of a plaint under Order VII Rule 11(d) CPC due to a limitation bar (Article 58 of the Limitation Act) where the plaintiff's own admissions showed the suit was time-barred, whereas the present case involves fundamental rights (Arts. 19(1)(d), 25, 26)

and maintainability under the MCS Act, issues entirely distinct from limitation and not addressed in the cited judgment, which instead reinforces that rejection under Order VII Rule 11(d) requires the defect to be evident from the plaint's face. Hence, the factual and legal circumstances being distinct, this precedent does not assist the defendants' position. The case law is therefore inapplicable to the arguments being advanced in the current proceedings.

16] In the light of above discussion, the Defendants' application for rejection of the plaint is devoid of merit. Hence, I pass the following order :

Order

- [i] Application [Exh. no. 9] is hereby rejected.
- [ii] No order as to costs.

[V. I. Shaikh]

Joint Civil Judge, J. D. Hingna

Date:- 07.08.2025