

MHNG150017112025



**ORDER BELOW Exh. 14 IN RCS No. 73/2025**

(Narayan Samarth and ors V/s. Ankush Samarth and ors)

This is an application filed by **defendant Nos. 1 to 5** for rejection of the plaint by virtue of Order 7 Rule 11 of Code of Civil Procedure (Hereinafter referred the said Code as 'the CPC' for short).

**02.** Defendant Nos. 1 to 5 submitted that this suit for partition, declaration and injunction are filed on the admitted fact that, father of defendant No. 1 to 5 Namdeo Samarth had two wives, first wife is Lilabai and out of this wedlock, he begot defendant Nos. 1 to 5 and during subsistence of first marriage, Namdeo Samarth married to Anusayabai i.e. the mother of Plaintiff Nos. 1 to 6 and late Madhukar Samarth. Thus since the marriage of Anusayabai is invalid, plaintiff Nos. 1 to 5 and late Madhukar are step brother and sisters of Defendant Nos. 1 to 5. It is admitted fact that, the suit property was purchased by father Namdeo Samarth and during partition suit property was fallen to the share of Rajesh Namdeo Samarth through his biological mother Lilabai Namdeo Samarth. It is further not disputed our real brother Rajesh died in 2000 subsequently his mother Lilabai died in 2016. In the light of these facts that, father Namdeo Samarth in partition handed over and transferred the suit property to deceased Rajesh and after death of Rajesh in 2000 in

view of his succession U/s. 8 and 10 Rule I and II of Hindu Succession Act mother Lilabai becomes the sole owner and successor of the suit property being only surviving Class I heir. That, after death of their mother Lilabai Samarth in 2016, in the light of their father having already died, U/ s. 14 and 15 (a) of Hindu Succession Act only defendant No. 1 to 5 becomes the owner, successor of the suit property under Class I heir. Therefore, plaintiffs are no where in the place or picture of succession. Hence the suit filed by Plaintiffs without locus standi and cause of action thus present suit is only deserve and deserves to be dismissed. Therefore there is no question of deprivation of right of Plaintiffs legitimate right is far away having no right at all in the suit property. Hence, in the light of above facts and legal position it is misleading blunder on the part of Plaintiffs on which they filed suit that, beyond doubt it being the father's property purchase in the name of minor son Rajesh at the time of sale deed all Plaintiffs have equal right in the suit property it being ancestral property of Plaintiffs hence their claim can not be discarded as alleged. In fact there is no fraud on the part of any of answering Defendants but it is the plaintiffs trying to play misleading the facts to hatch the wrongful gain under the garb of present untenable litigation under the law. Thus the plaintiffs being not entitled for any relief or filing suit on the ground that, they are the legal heirs within the provision of Hindu Succession Act, the present suit prima facie and prima vista deserves to be dismissed under Order 7 Rule XI of C. P. C. as hit under the said provision of law.

**03.** Defendant Nos. 1 to 5 further submitted that plaintiffs have averted they are knowing about the sale deeds executed by answering

Defendants, in favour of Defendant No. 6 to 8 prior to filing of suit, hence they are bound to evaluate the suit for declaration of the said documents as per the market rate or sell value in the sale deed and to pay court fee accordingly having challenge the sale deed accordingly. But Plaintiffs absolutely fail to valued the suit therefore according to documents and to pay court fees thereon on the valuation of the documents, hence suit is deliberately under valued and no proper court fees having paid suit is deserves to be dismissed, The suit is also being mischievous, fictitious, without cause of action and standi alongwith insufficiently valued and hit by the provision of Order 7 Rule XI of the C. P. C. need to be dismissed.

**04.** The plaintiffs filed their say at Exh. 18 and objected this application. They submitted that that this application filed by the defendants is nothing but the abuse of process of law. It is submitted that the first objection about relationship and heirship as taken by the defendants is not covered under any of the ingredients of the Order 7 Rule 11 of the CPC and hence on that grounds the plaint cannot be rejected at all. The main contentions of the defendants is that the present plaintiffs are the step brothers and sisters of defendants No. 1 to 5. As per Succession law the issues borne out of the second marriage are also the legal heirs of the deceased and hence the said question is required to be tried by adducing evidence in the matter and on this ground also the plaint cannot be rejected under the provisions of Order 7 Rule 11 of the CPC and hence the application needs to be rejected.

**05.** Heard both sides. Perused the application and say. This Court also gone through plaint and documents annexed with it. The following

points arise for determination of this Court. This Court has recorded its findings against each of them for the reasons as follows.

Sr. No.	Points	Findings
1	Whether the plaint is liable to be rejected for non-disclosure of cause of action (Reference- Order 7 Rule 11 (a)of the CPC) ?	..No.
2	Whether the plaint is liable to be rejected as the suit is barred by law (Reference- Order 7 Rule 11 (d)of the CPC) ?	..No.
3	Whether the suit is properly value for the purpose of payment of Court fees (Reference- Order 7 Rule 11 (b) (c)of the CPC) ?	..Yes.
4	What order ?	..The application is rejected.

### **REASONS**

#### **Point Nos. 1 and 2:**

**06.** This is application for rejection of plaint under 7 Rule 11 of the CPC, therefore, here it necessary to re-narrate relevant rule as follows:-

*11. Rejection of plaint:- Plaint shall be rejected in the following cases*

*(a) where it does not disclose a cause of action*

*(b) where the relief claimed is under valued, and the plaintiff, on being required by the Court to correct the valuation*

*withing a time to be fixed by the Court, fails to do so;*

*(c) Where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by Court to supply requisite stamp paper within a time to be fixed by the Court, failes to do so;*

*(d) Where the suit appears from the statement in plaint to be barred by the any law;*

*(e) to (g)-----*

**07.** It is settled position of law that for deciding application under Order 7 Rule 11 C.P.C., the averments made in the plaint are germane. For deciding the application under Order 7 rule 11 C.P.C., the Court has to consider the contents of plaint and documents annexed therewith and nor contention made in the Written-Statement or otherwise. So keeping said settled position of Law, this Court touch to the merits of the case.

**08.** According to defendant Nos. 6 to 8, the plaintiffs being a step-sons/step-brothers of the late Leelabai Namdeo Samarth and Late Rajesh Namdeo Samarth respectively are not having any right in their property so, there is no cause of action for suit and the suit is also barred by law.

**09.** This suit is for partition and separate possession. As per contents of plaint, Namdeo Samarth who are common propositus, were having two wives one is Anusaya i.e. defendant No. 11 and another is Lilabai. Plaintiff Nos. 1 to 6 and predecessors of defendant Nos. 7 to 10 namely Madhukar are sons and daughters of Anusaya and deceased

Namdeo Samarth and defendant Nos. 1 to 5 are son and daughters of Lilabai and Namdeo Samarth. According to plaintiffs, the suit property has been purchased by Namdeo Samarth from his own earning and given to the share of one son Rajesh Namdeo Samarth and his wife Lilabai was care taker of said property. According to plaintiffs, they are having equal right in the property of Namdeo Samrath, who is father of plaintiff Nos. 1 to 6 and one deceased Madhukar, who is predecessor of plaintiff Nos. 7 to 10. It means the plaintiffs are claiming right in the father's property and not in the property of steps mother or brother. Therefore, at this initial stage, the submission of defendants that the plaintiffs are not having right to claim share in the property of steps mother or brother, is not having any force.

10. Ld. Advocate for defendant Nos. 1 to 5 submitted that the plaintiffs have not right to claim partition in the property of step mother and brother under Hindu Succession Act. In support of said submission, he placed his reliance upon the case of *Dudhnath Kallu Yadav V/s. Ramashankar R. Yadhav* (Chamber Summons No. 495/2017 decided on 12/01/2018). However, as discussed earlier, it prima facie seen that the plaintiffs are not claiming shares in the share of step mother or brother. Therefore, the observations given in above cited case are seen to be given in different set of facts so, these are not applicable to the matter in hand.

11. According to defendants, the marriage of mother of plaintiff Nos. 1 to 6 and Madhukar is void as it was took place during existence of first marriage therefore, the sons and daughters of second wife are not

having any right to claim partition. However, the Hon'ble Apex Court in case of *Revanasiddappa and another versus Mallikarjun and others*, (2023 SCC OnLine SC 1087) also make the law regarding of child born out of void marriage clear and hold that they are also having right in the parents property. Therefore, at this juncture, it is not possible to hold that the plaintiff Nos. 1 to 10 are concerned with the suit property so, their suit is barred by any law.

**12.** Further, the plaintiffs have also pleaded specific cause of action for this suit for partition and possession in the plaint para No. 14 by coating incidents of earlier revenue proceeding, also by pleading about act of obtaining heir-ship certificate by defendant Nos. 1 to 5 by playing fraud and also by pleading the act of defendant Nos. 1 to 5 about selling of suit property to remaining defendants on 08/07/2025. The cause of action is bundle of facts. In the present suit, the cause of action is seen from reading the contents of plaint. Therefore, it is not possible to hold that there is no cause of action to this suit. Hence, point Nos. 1 and 2 are answered in negative.

**Point No. 3:-**

**13.** Ld Advocate for defendants argued that the the plaintiffs also sought declaration that sale deed dated 08/07/2025 which was executed by defendant Nos. 1 to 5 in favour of defendant Nos. 6 to 8 is null and void and not binding so, the plaintiffs have to pay Court fees on the basis of value of property mentioned in said deed. In support of said submission, he placed his reliance upon section 6 (iv) (ha) of

Maharashtra Court Fees Act.

14. Per contra, Ld. Advocate for plaintiff submitted that the plaintiffs are not party to said deed so they have to pay Court fees as per Section 6 (iv) (j) of Maharashtra Court Fees Act.

15. By way of this suit, the plaintiffs also sought declaration that sale deed dated 08/07/2025 which was executed by defendant Nos. 1 to 5 in favour of defendant Nos. 6 to 8 is null and void and not binding. Admittedly the plaintiffs are not party to said sale deed. Ld. Advocate for plaintiffs placed his reliance upon the observations of Hon'ble Apex Court given in case of ***Suhrid Singh @ Sardool Singh V/s. Randhir Singh*** (2010 AIR SC 2807) and the Hon'ble Bombay High Court given in case of ***Purshottam S/o Tukaram Ambarwele V/s. Mahadeo S/o Tukaram Ambarwale*** (dead) (Second Appeal No. 323/2019 decided on 03/02/2023). As per observations given in cited cases, when if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him and not required to pay Court fees as per Section 6 (iv) (ha) of Maharashtra Court Fees Act on the basis of market value. In such circumstances, the suit is required to be valued as per Section 6 (iv) (j) of Act by considering the value of property as Rs. 1000/-. Similarly view has been subsequently opted by Division Bench of Bombay high Court ***Dilip Khushalchand (Srisrimal) Jain Versus Hardik Deepakbhai Ramani & ors.*** ( Writ Petition No. 8969 fo 2018 decided on 05 May 2022). Accordingly, the valuation of suit property is seen to be done for the purpose of

payment of Court fees. Hence, it is not possible to hold that the plaintiffs have not paid proper Court fees. Hence, point No. 3 is answered in negative.

**Point No. 4:-**

**16.** As discussed in point Nos. 1 and 2, the suit is not seen barred by any law. The cause of action is also seen to this suit. From above discussion, the suit is also seen to be properly valued. Hence, the application is liable to be rejected. Resultantly, following order is passed.

**ORDER**

- I. The application is rejected.
- II. Costs in cause.

Date : 04/10/2025

(V. H. Khedkar)  
CJJD., Hingna.