

MHNG150017112025



**ORDER BELOW Exh. 24 IN RCS No. 73/2025**

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

This is an application filed by defendant Nos. 6 to 8 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. 6 to 8 submitted that plaintiffs have filed this suit claiming the right in the property alleged to be ancestral/joint family property. Plaintiffs are merely a step-son/step-brother of the late Leelabai Namdeo Samarth and Late Rajesh Namdeo Samarth respectively, through whose estate the Plaintiffs are claiming the share. Under the Hindu Succession Act, 1956 and as per settled principles of personal law, a step-son/step-brother is not a Class I heir and does not inherit as the legal heir unless valid adoption or legal parentage is established. Plaintiffs have neither pleaded nor produced any evidence like as Legal adoption under the Hindu Adoptions and Maintenance Act, 1956, recognition as a biological child or any valid basis under which they would inherit from the estate of the deceased.

**03.** Defendant Nos. 6 to 8 further submitted that accordingly, the plaint does not disclose a cause of action against defendants, nor does it

prima facie establish any legal right or entitlement in the suit property in favor of the Plaintiffs. It is settled law that a step-son (not adopted) is not a legal heir under the Hindu Succession Act. If the (step) son is adopted, then such son may inherit from adoptive parents only. A biological child of a spouse from another marriage does not inherit from the other spouse without legal adoption. On a plain reading of the pleadings, is barred by law and deserves to be rejected at the threshold under Order 7 Rule 11 (a) and (d) CPC.

**04.** The plaintiffs opted the reply (Exh. 18), which was given against the earlier application filed for rejection of plaint, for this application. The plaintiffs objected this application by submitting 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	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, fails 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 not 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. 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.

11. 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:-**

**12.** 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. 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.