

Order below Exh.55 in R. C. S. No.0113/2023**CNRNOMHOS1200003402023****Nature of application -**

1. Present application is filed by defendant no. 1 to 5 under Order 7 Rule 11(d) of C.P.C for rejection of plaint.

Grounds of application -

2. It is averted that, suit is filed on false, frivolous and concocted grounds seeking reliefs which are not legally maintainable in the eyes of law. The plaint suffers from incurable legal defect which goes to the root of maintainability of the suit. Contents in the plaint do not disclose any cause of action against defendants. Plaintiff by misleading has projected self acquired properties of defendants as ancestral properties. The reliefs claimed by plaintiffs are not tenable being outside jurisdiction of the court. The claim of plaintiffs is barred by limitation. Plaintiff has under valued the suit and paid insufficient court fee. The suit is not tenable in the law and on facts. They have lastly prayed to reject the plaint.

3. Plaintiff has submitted his say to the application at Exh.51. He has submitted that, the application is filed to prolong the matter. The signature of Ld. Advocate on the application is forged by the defendants. Plaintiff has sought relief of declaration of ownership and recovery of possession along with mesne profit. Defendant No.1 used to operate bank account of plaintiff as he was minor. Plaintiff had also given fixed deposit receipts to the defendants for renewal. Defendant No.1 has misappropriated amount in his bank account and has also misappropriated his fixed deposits. He has also withdrawn amount from his bank account illegally. Defendant No.1 has purchased suit properties

from the cheque amount given by the plaintiff and amount withdrawn from his bank account and also from the compensation of acquisition of his ancestral properties. As the suit properties are purchased out of the amount of plaintiff, those are properties belonging to him. He had cause of action to file the suit. He has properly valued the suit and paid sufficient court fee thereon. The suit is within limitation. He has prayed to reject the application.

Arguments -

4. Heard argument of advocate for both side. Ld. Advocate Shri. B.B. Gawde for defendants has submitted that plaintiff has filed two F.I.R's against defendants, first in the year 2020 and second in the year 2022. He has submitted that, plaintiff has shown date of cause of action of the year 2004 and as such the suit is barred by limitation. He has further submitted that, at the most plaintiff could have filed suit for recovery of alleged money and not mesne profit. He has also submitted that, plaintiff has not properly valued the suit and not paid sufficient court fee thereon. He has prayed to allow the application. Perused the written argument submitted by him. He has made reference of two judgment of the Hon'ble Apex court in the case of **T. Arvindam Vs. T. V. Satyapal & Ors. AIR 1977 SC 2421 and Khatri Hotels Pvt. Ltd. & anr. Vs. Unior of India and anr. AIR 2011 SC 3590** in his written argument. However he has not furnished copy of the rulings on record.

5. Ld. Advocate for plaintiff has submitted that, there are many causes to the plaintiff to file the suit. He has also submitted that, limitation is mixed question of law and fact. He has next submitted that, plaintiff may be given an opportunity to prove his case and to show that the suit is within limitation. It is further submitted by him that, plaintiff has properly valued the suit and has paid sufficient court fee for the reliefs sought.

6. Considering the contentions of the rival parties following points arise for my consideration and I record my findings thereon -

Sr. No.	Points	Findings
01.	Whether the suit discloses cause of action ?	Affirmative.
02.	Whether the suit is barred by law of limitation ?	Negative.
03.	Whether the relief claim is properly valued?	Affirmative.
04.	Whether sufficient court fee is paid for the relief sought?	Negative
05.	What order?	Plaintiff is directed to supply requisit court fee.

Reasons

7. It is apposite to refer here Order VII Rule 11 of the C.P.C. which provides thus-

Order VII Rule 11

11. Rejection of plaint.— The plaint shall be rejected in the following cases:—

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

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on

being required by the Court to supply the 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 the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9 [Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

As to point No.1 & 2:

8. Bone of contentions of the defendant is that plaint does not disclose cause of action, suit is not filed within limitation, it is not properly value and no sufficient court fee has been paid thereon. It is settled principle of law that the court must only take into consideration the averments in plaint and it is not open to decide the issue on the basis of any other material including the written statement in the case. However, while considering averments in plaint for deciding application for rejection of plaint, the court should not construe pleading too strictly.

9. In the case of T. Arvindam (Supra) the Hon'ble Apex Court has held that, *“(1) If on a meaningful-nor formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he (Munsif) should exercise his power under Order VII rule 11, C.P.C.*

taking care to see that the ground mentioned therein fulfilled. And, if clever drafting has created the illusion of a cause of action, it should be nipped in the bud at the first hearing by examining the party searchingly under Chapter X, C.P.C. An activist Judge is the answer to irresponsible law suits.”

10. In Khatri Hotel (supra) the Hon’ble Apex Court has laid down that, *“While enacting Article 58 of the 1963 Limitation Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word ‘first’ has been used between the words ‘sue’ and ‘accrued’. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.”*

11. Plaintiff has averred that defendant No.1 is his real brother and defendant No.2 to 4 are children of him and defendant No.5 is wife of him. According to the plaintiff there was a partition of ancestral properties between him and defendant No.1. He has contended that he use to take education during the relevant period and his land was being cultivated by defendant No.1 and he was getting much income from it. He states that, he has saving bank account in Maharashtra Gramin Bank and defendant No.1 was a guardian to the account as he was minor at that time. Defendant no. 1 used to operate his bank account. Plaintiff had given fixed deposit receipts to him for renewal. Plaintiff has also alleged that, defendant No.1 withdrawn amount from his bank account illegally. He also assert that defendant No.1 withdrawn amount of his fixed deposit receipts. He has asserted that defendant No.1 purchased the suit properties in the name of defendant No. 2 to 5 out of the misappropriated amount. He has contended that, though the suit properties stands in the name of

defendant No.2 to 4, he is real owner of them as those properties are purchased out of amount belonging to him. He has also contended that, he used to cultivate the suit properties. However, he got job out side the city, so he went for job there. He asserts that as such, defendant started to cultivate the suit properties. He also asserts that he requested defendants to record the suit properties in his name as they had stopped to give him the income of suit properties. He says that, cause of action arose on 18.06.2023 when he again made request defendants to record the suit properties in his name and handover him possession of it and they refuted his request.

12. Order VII Rule 1 (e) provides that the plaint shall contend the facts constituting the cause of action and when it arose. Cause of action is the set of facts or legal reason that gives right to sue someone in a court. It is the foundation of the entire case. Cause of action involves bundle of facts. Plaintiff has mentioned that suit properties were purchased by defendant No.1 in the name of defendant No.2 to 5 out of the amount withdrawn in his bank account and his fixed deposit receipt by misappropriating the same. He says that, suit properties belongs to him, but defendants have refuted his title to the suit properties. He has also mentioned that, initially he had possession of the suit properties however meanwhile defendants entered into possession of the same. He has described that, he had sought possession of the suit properties and had asked defendants to record his name to the suit properties to which they denied. Plaintiff has shown this fact as cause of action to the suit. Defendant has contended that plaintiff has shown illusory cause of action to the suit. The merits of cause of action can not be gone into at the stage of deciding application under Order VII Rule 7 of the C.P.C. Plaintiff has shown prima-facie cause of action to file the suit.

13. Plaintiff has mentioned that cause of action arose on 18.06.2023 when defendants denied his title to the suit properties and refused to hand over possession of it. Issue of limitation generally is of mixed question of law and facts. It requires trial. Suit for declaration are required to be filed within period of three years from the date of accrual of cause of action. In a suit for recovery of possession based on title the limitation of six months is provided. Where as in a suit for recovery of possession on the basis of illegal dispossession period of 12 years is provided for filing the same. Plaintiff claims to be owner of the suit properties. He has mentioned that, defendant denied his ownership of over it on 18.06.2023. Present suit is filed on 21.08.2023 which prima-facie appears to be within limitation.

14. Considering the aforesaid discussion I find that, both ruling relied upon by defendant are not applicable to the case in hand as facts of the case in hand and the rulings are different. In view of all these discussion, I find that, plaint discloses cause of action and it is not barred by any law especially Limitation Act. So I answer point No.1 in 'Affirmative' and point No.2 in 'Negative'.

As to point No.3 & 4:

15. Section 8 of Suit Valuation Act, provides that *Court-fee value and jurisdictional value to be the same in certain suits.—Where in suits other than those referred to in the Court-fees Act, 1870 (7 of 1870), section 7, paragraphs v, vi and ix, and paragraph x, clause (d), court-fees are payable ad valorem under the Court-fees Act, 1870, the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same.*

16. The valuation of suit for declaration of ownership and recovery of possession of immovable property for jurisdiction is generally the same as the

valuation of court fee purposes, because the relief of possession attracts *ad valorem* court fee.

17. Plaintiff has valued the suit for jurisdiction purpose at Rs.5,62,169/- and valuation of the house property for court fee is made at Rs.5,54,125/- and for land at Rs.1609/- i.e. 80 times of survey assessments. In amended plaint he has corrected the value of suit for court fee purpose at Rs.1,13,91,250/- and has paid court fee on $\frac{1}{2}$ of *ad valorem*. He has paid court fees of Rs.75,630/-.

18. Section 6 of Maharashtra Court Fees Acts provides that rule for computation of fee payable in certain suits. Perusal of Section 6(iv)(d) of the Maharashtra Court Fees Act, provides that if only a declaration of ownership is sought court fee at $\frac{1}{4}$ of *ad valorem* leviable for suit for possession on basis of title of subject matter, with minimum of 100 Rs. is required to be paid. The section further provides that wherein declaration plus consequential relief other than possession is sought $\frac{1}{2}$ of *ad valorem* fee is required to be paid as court fee. The section also says that, if the declaration along with possession is asked for, full *ad valorem* fee is payable on the value of the properties as determined under Section 6(v) of the Act. It is clear from perusal of clause regarding valuation of court fee mentioned in the plaint that plaintiff has paid court fee on $\frac{1}{2}$ on the *ad valorem* fee. It is manifest from record that plaintiff has not paid sufficient court fee on the relief sought. Order VII Rule 11(c) of C.P.C. says that when the plaint is written upon a paper insufficiently stamped, the court can direct the plaintiff to supply the requisite stamp paper within time to be fixed by it and failing to do so can result in rejection of the plaint.

19. Considering the relief sought by the plaintiff and valuation for jurisdiction purpose of the suit made by plaintiff, it appears that he has properly valued the suit. However, it reflect that he has not paid sufficient

court fee for the relief sought. In the result I answer point No.3 in the “Affirmative” and an answer to point No.4 in “Negative”.

As to point No.5:

20. In view of finding recorded against point No.1 to 4, I proceed to pass following order:

ORDER

1. Plaintiff is directed to pay deficit court fee Rs.58,286/- (Fifty-Eight Thousand Two Hundred Eighty-Six rupees only) within a month from today.
2. It is made clear that in the event of failure to pay deficit Court fee within the stipulated period, the plaint shall be liable to be rejected under Order VII Rule 11 (c) of C.P.C.
3. Costs in cause.

Date- 22-06-2026

(Rahul D. Dange)
Jt. Civil Judge Sr. Division, Bhoom

CERTIFICATE

I affirm that, the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of Stenographer	---	Mr. Sayyad R.M. Stenographer - Grade II
Court	---	Mr. R.D. Dange Jt. Civil Judge, Senior Division, Bhoom, District - Osmanabad.
Date	---	22/06/2026
Order signed by the Presiding Officer on	---	22/06/2026
Order uploaded on	---	22/06/2026