

CNR NO. MHPU100000552023



|                                                                               |  |
|-------------------------------------------------------------------------------|--|
| IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION, P.C.M.C.<br>COURT, AKURDI, PUNE. |  |
| R.C.S.No. 7/2023                                                              |  |
| Vilas Baban Aabhane                                                           |  |
| - Vs-                                                                         |  |
| P.C.M.C. & Ors.                                                               |  |

**ORDER BELOW EXH. 39.**

(Passed on 21.04.2025)

This is an application moved by the defendant no. 4 to 6 under Order 7, Rule 11 (a) of the Code of Civil Procedure, 1908 (The C. P. C.) for rejection of plaint.

2. Called say of plaintiff. They have filed their say below Exh. 42.

3. Counsel for defendant no. 4 to 6 have submitted that, plaintiff have filed suit for declaration and permanent injunction but there is no cause of action arose for filing of suit to the plaintiff. They further submitted that, suit property which is owned by their father i.e. Bhimaji Arjun Aabhane by their own income in the year 1972 and after their demise the defendant no. 4 to 6 have remains their heirs. As such, their names have been mutated on 7/12 extract

and ferfar as a owner and possessor. Therefore, the plaintiff have no locus standi to file the suit in respect of suit property because there is no connection and rights of plaintiff.

4. On the other hand, plaintiff have strongly opposed the application and in argument they argued that, the application is not maintainable and all the facts have been enumerated by the plaintiff in the plaint. There is a strong case in favour of plaintiff and cause of action also mentioned in the plaint. Hence, there is no need to reject the plaint and lastly prayed to reject the application.

5. Learned counsel Shri. K. D. Sonawane for defendants have filed written notes of argument at Exh, 44 and heard learned counsel Shri, V. B. Thorwe for plaintiff at length. On the rival pleading of the parties, the following points arise for my consideration. My findings thereon are as follows with following reasons.

| Sr. No. | Points                                                                                                          | Findings            |
|---------|-----------------------------------------------------------------------------------------------------------------|---------------------|
| 1       | Whether the plaint is liable to be rejected under order 7, rule 11-(a) of C.P.C. in absence of cause of action? | .. Negative.        |
| 2       | What order ?                                                                                                    | As per final order. |

## **REASONS**

### **AS TO POINT NO.1 :**

6. It is an established principle of law that, to decide an application for rejection of plaint only plaint averments are to be considered. So far as cause of action is concerned, it is an established principle of law that, the cause of action has to be judged as per the averments made in the plaint. It is bundle of facts mentioned in plaint which are to be considered for ascertaining the cause of action. Let us therefore see the averments in the plaint.

7. Averments made in the plaint are that, plaintiff's father Baban Arjun Aabhane and Radhu Devka Gawali have purchased the suit property i.e. plot no. 28 of S. No. 13/3A/3B of Mouje Sangavi towards the name of Bhimaji Arjun Aabhane in the year 1972. Bhimaji Arjun Aabhane is a father of defendant no. 5 and 6. While purchasing the suit property the plaintiff's father have gave the consideration amount as like as half guntha and thereafter oral partition have been done in the year 1976 in respect of suit property. The defendant no. 4 to 6 have started construction and they have take permission from defendant no. 1 to 3 and by way of this suit, they wants permanent injunction against defendant no. 4 to 6. After perusing the record, then also shows that, the name of Bhimaji Arjun Aabhane have enumerated upon the affidavit which submitted before the defendants and he have paid taxes.

8. The ownership of the suit property, the possession over the suit property, will be decided on merits. The defendants have every opportunity to contest and rebut the evidence which would be led by plaintiff. But at this stage, it can not be said that, plaintiff does not have cause of action to file the present suit. Considering the facts and discussion, I answer point no. 1 in the negative.

**AS TO POINT NO. 2.**

9. As I discussed earlier and given the answer the point no. 1 in negative, for the point no. 2 I proceed to pass following order.

**ORDER**

1] The application Exh. 39 is hereby rejected.

2] Costs in cause.

Akurdi.

Date: 21/04/2025.

Sd/-xxx

**( V. S. Damare )**

Civil Judge, Junior Division,  
PCMC Court, Akurdi, Pune.

**CERTIFICATE**

“I affirm that the contents of this P.D.F. file Order are same word for word as per original Order”.

Name of Stenographer :- P. B. Jadhav

Court Name :- Shri. V. S. Damare,  
(J.M.F.C.) Civil and Criminal Court (P.C.M.C.),  
Akurdi, Pune.

Date :- 21/04/2025

Order signed by  
presiding officer on :- 21/04/2025

Order uploaded on :- 21/04/2025