



ORDER BELOW EXH. No. 42 IN R.C.S. No. 182/2019

[Dattatrey Vs. Tarabai & Anr.]

(Passed on 5th May, 2026)

This application is moved by defendant no. 1 and 2 under Order VII Rule 11(a) of the Code of Civil Procedure (for short 'the C.P.C.').

2. As per defendants, present suit of plaintiff for declaration and injunction is without cause of action because due to decision in Special Summary Suit no. 121/2017 the Hon'ble Senior Division court has rejected the probate application for Will deed dated 25.06.1992 of plaintiffs on 10.10.2018. Thus plaintiffs cannot file this suit again for declaration on basis of that Will deed as there is no cause of action for filing of this suit. Therefore the plaint be rejected under Order 7 and Rule 11 (a) of C.P.C.

3. Plaintiffs have filed say at Exh. 44 and resisted this application on the ground that it is false, frivolous and filed with an intention to delay the trial and give a go by to the plaintiff's claim for declaration. As per plaintiff the probate application no. 63/2014 filed by this plaintiff on basis of Will deed dated 25.06.1992 was contested by defendants and therefore it was converted into Special Summary Suit no. 121/2017 which was decided on merits and dismissed on 10.10.2018. But the rejection of probate does not act as a bar on right of plaintiff to seek his declaration on basis of that Will deed through a Civil suit. Further due to dismissal of that probate application defendants are causing obstruction to plaintiffs possession and are in attempt to create third party interest in the suit property. Therefore a continuous cause of action arose for plaintiff for filing this suit for

declaration and injunction since the passing of decision in Special Summary Suit no. 121/2017 dated 10.10.2018. Hence this application deserves to be rejected.

4. Heard Ld. Advocate for defendant. The Ld. Advocate of plaintiff have adopted his say as argument by filing pursis at Exh. 45.

5. Perused the record in detail. Suit is for declaration and injunction. Admittedly, the probate application no. 63/2014 of plaintiff on basis of Will deed dated 25.06.1992 was contested by present defendants and therefore it was converted into Special Summary Suit no. 121/2017. This Special summary suit was decided on merits and dismissed. Hence the prayer of probate of plaintiff was rejected. But this does not bar the right of plaintiff to file a suit for declaration on basis of that Will deed. The decision of probate is not a bar to trial of the civil suit. Further plaintiff has even sought the relief of injunction. As per plaintiff due to decision of Special Summary Suit no. 121/2017 on 10.10.2018, defendants have started causing obstruction to his possession and are even in attempt of creating third party interest in respect of suit property. Plaintiff have specifically pleaded this as a cause of action in para 8 of this plaint for filing this suit for injunction as well as declaration. It is well settled position of law that for decision of application under Order 7 Rule 11 of C.P.C., only the contentions of plaint are to be considered. Nothing in the written statement or the documents relied by defendants can be taken into consideration. Further the rejection of probate does not bar the right to file a suit for declaration in order to establish his right on the basis of alleged Will deed. The burden is upon plaintiff to prove this and he cannot be denied the remedy for the same by rejection of this plaint. Even the bar of resjudicata is a mixed question of law and fact which cannot be decided at this stage. Furthermore the relief of injunction can only be

sought before the Civil Court. Therefore, from the contentions of
plaint, I do not find this suit for declaration and injunction to be
without cause of action or barred by any law. Hence in view of above
discussion I pass following order.

ORDER

Application is rejected.

Daund.
Date :- 05.05.2026.

[Smt. S. A. Virani]
Jt. C.J.J.D., Daund, Dist. Pune.

CERTIFICATE

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

Name of Steno	:-	S. A. Kanaki
Name of the Court	:-	Smt. S. A. Virani, Jt. C.J.J.D., Daund, Dist. Pune.
Order date	:-	05.05.2026.
Order signed by the Presiding Officer on	:-	05.05.2026.
Order uploaded on	:-	05.05.2026.