



**ORDER BELOW EXH. 23**  
(Passed on 07/05/2025)

1. The present application is filed by defendant No. 1 to 4 for rejection of plaint under Order 7 Rule 11(b) (d) (e) and Rule 14 (1) of Code of Civil Procedure.

2. Defendant no. 1 to 4 have submitted that, present suit is filed by plaintiff no. 3 being guardian of minor plaintiff No. 1 and 2. Plaintiff filed an application for permission to appoint guardian. However, till the date no order passed on present application. So also plaintiff had not provided copy of the said application to the defendant. In such a way since beginning plaintiff has filed suit in illegal manner. Plaintiff claim relief of declaration, injunction, partition however, suit is not properly valued. Until proper valuation is paid suit cannot proceed further. The valuation of Suit property 'A' is 3142/- and valuation of suit property 'B' is 12,47,400/- However, plaintiff has not paid proper valuation. Plaintiff has prayed for declaration that sale deed No. 8125/2021 is not binding upon them. Plaintiff has not filed the copy of 7/12 extract and copy of sale deed. Further plaintiff has not added necessary party in the suit hence, considering all these facts suit is liable to be rejected.

3. Called the say of plaintiff. They filed their say at Exh. 28. They denied all adverse allegation and submitted that, defendant has not mentioned how much stamp fees be required to be paid by the plaintiff. Further, Suit property is purchased from the income source of plaintiff No. 3 and from income of ancestral property. The

submission made by defendant in respect of non joinder of necessary party can not be considered. Hence, application is liable to be rejected.

4. Perused the record. Heard both the sides. Defendant has argued that, plaintiff has prayed 1/3rd share in the suit property. However, plaintiff has not valued the suit properly. As per documents filed below Exh. 30 the valuation of suit property is 19,47,515/- and 7,70,823/- therefore, this court has no jurisdiction. Plaintiff has to pay ad-valorem fees. Further suit property is bad for non joinder of necessary party hence, liable to be rejected.

5. In support of their contention they relied upon 2007 Supreme (SC) 759 in RV dev @ R. Vasudevan Nair Vs. Chief Secretary Wherein Hon'ble Court has held that, for calculation of court fee, there does not exist any distinction between a situation attracting Rule 10 on one hand and Rule 11 on other. The court fees is to be calculated on amount claimed and not on amount decreed. Also relied upon 2023 Supreme (SC) 664 in B.P. Naagar and Ors. Vs. Rajpal Sharma wherein hon'ble Court has held that a suit which has not been properly valued and proper court fees has not been paid, can rejected in terms of Order 7 Rule 11 of CPC. Further, relied upon R.C. Sundaravalli Vs. T.D. Shakila wherein it is held that the fact that issues have been framed in a suit cannot come in the way of consideration of an application under Order 7 Rule 11 CPC. I have gone through the citation referred above the facts in the cited case and case in hand are different therefore, with due respect it is not applicable to the case in hand.

6. On the other hand plaintiff has argued that they have

filed proper court fees. Further, defendant has not mentioned how much court fees is required to be paid by plaintiff. Further argued that plaintiff No. 1 and 2 are major now therefore the contention of defendant cannot be taken into consideration at this stage. Hence, prayed for rejection of the application.

7. While deciding the application for rejection of plaint. The averments in the plaint are germane. In the case in hand, on perusal of record it appears that the present suit is for Partition, declaration and permanent Injunction. Plaintiff has claimed the relief of partition of their 1/3rd share in suit property and declaration that the sale deed No. 8125/2021 is not binding on them. So far as contention of defendant in respect of suit is not properly valued and plaintiff is required to pay ad-valorem fees is concerned. Defendant have not mentioned the provisions of law under which the valuation has to be done on the consideration amount of the sale deed. And this is not adequate when the application of rejection of plaint is being filed.

8. In the case in hand plaintiff is claiming the declaration on the ground that the sale deed executed by defendant No.1 in favour of defendant No.2 is executed without the consent of plaintiff hence, it is illegal and not binding on them. Plaintiff is not party to the sale deed. Plaintiff are only claiming relief of declaration that the sale deed is not binding upon them. Therefore, plaintiff is required to pay court fees as per sec. 6(4)(j) of Maharashtra Court Fees Act 1959. Further, Records shows that plaintiff has already paid the court fees for relief of partition, injunction and declaration as mentioned in plaint para No. 14.

9. Further, the issue of jurisdiction and valuation can be

kept open at the time of framing issues hence, considering all these facts. I do not find suit is improperly valued and liable to be rejected.

10. Further, defendant has also argued that suit is bad for non joinder of necessary party. Plaintiff is Dominus litis i.e. He is best judge of his own interest. Therefore, he can choose the party against whom the relief is sought. The question of adding party in the suit is matter of fact that should not be considered at this stage. Further, non joinder of necessary party is not a ground to reject the plaint. Hence, while deciding present application the contention of defendant can not be taken into consideration. Hence plaint cannot be rejected on the ground of non joinder of necessary party. As already discussed above while deciding the application for rejection of plaint. The averments in the plaint are germane. Considering plaint averment plaint is not liable to be rejected. Hence, I pass following order-

### ORDER

The application is rejected.

Date: 07/05/2025.  
Daund.

(**S. D. Mukkanwar**)  
5<sup>th</sup> Jt. Civil Judge, Junior Division  
Daund, Dist- Pune