

**MHRG070004232023****:: ORDER BELOW EXHIBIT-14 IN RCS NO.56/2023 ::****Kamal Arjun Bhoir****.....Plaintiff****Versus****Maruti Bendu Saloke & Ors.****.....Defendants**

01. Defendants no 1 has filed this application under Order VII Rule 11 of Civil Procedure Code. It is contended that, the plaintiff prayed for partition of the suit property. out of suit property survey no 63/24 and 8/4 are belonging to Sudhakar Medhi as a simple tenant साधे कूळ by virtue of order passed by Ld Tahsildar in tenancy case 22/21/52 ,dated. 22/08/2022. It is also contention of defendant no 1 and plaintiff never cultivated suit land, why plaintiff not asked for partition of suit property? The plaint does not show any cause of action for plaintiff for asking for partition. Moreover suit filed by plaintiff is out of limitation. It is also contention of defendant no 1 that, out of suit property survey no 63/12 has been sold by plaintiff to the third person by accepting consideration this facts not mentioned by plaintiff in his plaint. Therefore the present suit is not tenable in the eyes of law as per order VII, Rule 11(d) of the CPC. Defendants lastly prayed that, present application may be allowed.

2. plaintiff has filed her say at (exh 19). It is contention that, thought name of defendant no 1 reflected as a simple tenant to the suit property that is 63/24 and 8/4, sold suit property cultivated by father of

plaintiff and defendant Bendu Tatu Salokhe and before him Tatu Govind salokhe . Therefore plaintiff is having undivided share in the suit property which she has pleaded in Para 5 of her plaint. It is also contention plaintiff that,only agreement to sale executed in respect of suit property that is survey no 63/12 not sale deed, even she has not received whole consideration amount. Lastly plaintiff prayed that present application may be rejected.

04. Heard Ld. Adv. Githesh Sawant for plaintiff and Shri. Sharad Sawant for Defendants. I have perused the application, say, pleading of the plaint, documents on record and the authorities submitted by both the parties.

05. The Civil Procedure Code, 1908, provides the procedure for the enforcement of civil rights and liabilities specified under various substantive laws. An integral part to such procedural formalities is the institution of suit against the defendant in the court of law. A suit has to be instituted by presenting of the plaint. Presentation of plaint is subject to Order VI and Order VII under the C.P.C. wherein Order VII specifically dealt with plaint and its formalities such as the particulars to be contained within. Among other rules under Order VII, Rule 11 states the various grounds upon which the court can reject a plaint. Whenever an application is filed under Order VII, Rule 11, the court before moving forward, needs to evaluate the said application and determine whether the plaint is admissible to be instituted or not. In the famous case of **Saleem Bhai v. State of Maharashtra** held that, for the purpose of deciding an application under Order VII, Rule 11, only the averments in the plaint are germane. The object of the said provision is to keep out of courts irresponsible law suits. If the court is prima facie of the view that suit is an abuse of process of the court in the sense that it is a bogus irresponsible litigation, the

jurisdiction under order VII Rule 11 of the code can be exercised. The Order VII rule 11 of C.P.C. read as under-

**O.VII R.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 returned 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 :[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.*

06. In order to deal with such a menace, the C.P.C. under Order VII Rule 11 provides litigants the option to pursue an independent and special remedy, empowering courts to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any grounds contained in this provision. Recently, the Hon'ble Supreme Court of India in the case of **Dahiben v. Arvindbhai Kalyanji Bhanusali reported in 2020 SCC online SC 562**, while dealing with an appeal against an order allowing rejection of a suit at the threshold, had occasion to consider various precedents, discussing the intent and purpose of O.VII R.11, while setting out the principles in relation to the

same.

07. Plaintiff has initiated the suit against the defendants for partition of the suit property. Plaintiff filed suit in respect of suit property Survey No 63, Hissa No.4, Survey No.63, Hissa No 9, Survey No.63 ,Hissa No.12, Survey No.63 ,Hissa No.2A, Survey No.63, Hissa No 24/1 and Survey No 8, Hissa No 4. I have perused the 7/12 extract of suit properties. It depicts that, name of Yamunabai Bendu Salokhe, Maruti Bendu Salokhe, Vimal Shivaji Thakre and Kamal Arjun Bhoir (plaintiff) are shown as a occupants in common to the survey no 63/4 ,63/9,63/12, 63/2 A . It is means that, whether plaintiff is having undivided share in these suit properties require full-fledge trial. Moreover mutation entry 548 reflect that, after death of Bendu Govind Salokhe, name of Yamunabai Bendu Salokhe, Maruti Bendu Salokhe, Vimal Shivaji Thakre and Kamal Arjun Bhoir (plaintiff) recorded as legal heirs in respect of suit property 63/4 ,63/9,63/12, 63/2 A . I have perused the 7/12 extract of suit properties i.e. 63/24, 8/4 name of defendant no 1 i.e. Sudhakar Narayan Medhi shown as a occupants. Mutation entry 791 has reflect the same.

08. For deciding application for rejection of plaint, one has to look into averments made in plaint only. Therefore, I have gone through pleading of plaintiffs. The present suit is for partition and perpetual injunction. It is contention of plaintiffs that, she is having undivided share in this suit property i.e. Survey no. 63/4 ,63/9,63/12, 63/2. The fact that plaintiff is having undivided share in the suit property, the said pleading needs to be decided on merit after adjudication of trial. The rights of parties can not be decided at this stage. Moreover it is well settled law that, limitation is the mixed question of facts and law. Considering the aforesaid

facts and circumstances of the case and the ratio laid down by Hon'ble Supreme Court, I came to the conclusion that the application filed by defendant under O.VII R. 11 of C.P.C. is devoid of merit. Hence I pass the following order.

**:: ORDER ::**

1. The application filed by defendant below Exh.14 is hereby rejected.
2. The cost will be in main cause.

Date: 27-09-2024

sd/-  
[Smt. S. R. Shinde]  
Jt. Civil Judge Jr. Div. Karjat,  
Dist. Raigad.