


CNR No. MHRG080009022021 	<u>R.C.S. No. 48/2021</u> Smt. Kundabai Madhukar Mahabdi <b>Vs.</b> Janardan Sadhu Gaikwad through its legal heirs Shri. Balu Janardan Gaikwad and others
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**Order Below Exh. 41**

**Application under Order 7 Rule 11 of C.P.C. on behalf of defendant no. 7 & 8.-**

**Contents in the application briefly as follows:**

1. The present suit is filed by the plaintiff for the relief of partition, declaration on sale deed of suit properties, & injunction.
2. However the facts and allegation stated in plaint are completely misconceived & vexatious qua Defendants no. 7 & 8. It deserves to be dismissed in limine with cost. This defendants state that, the above suit it liable to be rejected on the ground that it comes under the purview of Order 7 Rule 11a to Order 7 Rule 11d of the C.P.C.
3. The present plaintiff valued the suit property Para No.15. It has paid only Rs. 400/-, it ought to have been according to Court fee Act. There are the various sale deed which are denied by the plaintiff & prayed according to plaint Para No. 17 [c] so far as the suit properties plaint para no. 3 of Sr. No. 5 of the plaint Survey No. 31/2b is a non agriculture land & the total cost of the said land more

than Rs. 5,00,000/- ( in Words Five lakh only) and hence suit for partition and declaration on sale deed the court fees is not properly paid. Therefore this Hon'ble court ought to have dismissed the said suit under order 7 Rule 11 b of C.P.C.

4. It is further submitted that the def. no. 9 is a State Government and the provision prescribed under National Highway Act and Civil Procedure Code Section 80 is a mandatory notice, shall have been served to the said defendants before making him parties the suit. Hence suit liable to be dismissed.

5. The plaint para No. 11, the cause of action arosed on Date 30/01/2019 & when the notice is issued to the defendants. But unfortunately the said notice is not part & parcel of the suit. Hence there is no any cause of action remains, the suit is liable to be dismissed on the ground of non including the whole properties in the partition suit. Further suit is barred by law of limitation. Because the mutation entries which are concern they are mutated in the year 1911 and another mutation entry no. 513 mutated in the year 1954. Therefore this suit is not maintainable and plaint is liable to reject.

6. Plaintiff has filed say to this application vide Exh. 51 in which it is contended that present application is false and not cover under Order 7 Rule 11 of C.P.C. Plaintiff has prayed for declaration that sale deed executed is not binding on her share. Defendants have illegally acquired suit properties therefore plaintiff has prayed for partition of the suit properties. Accordingly present application is liable to reject.

7. Perused the application and say. Heard both the learned advocates.

8. First objection raised by this defendant that suit is barred by non joinder of necessary parties. Therefore it is not tenable. In view of Order 7 Rule 11 a to f non joinder of necessary parties is not a ground for rejection of plaint. Further plaintiff has failed insufficient court fee stamp. Suit property survey no. 31/2b is a non agricultural land and valuation of the same is beyond Rs. 5,00,000/-. On perusal of 7x12 Extract filed by plaintiff it reveals that the suit land is non agricultural. But in the plaint it has not been specifically stated the valuation of survey no. 31/2b. Being non agricultural property valuation of the same should be specifically stated by plaintiff and sufficient court fee stamp let to be paid. Plaintiff has stated that sale deeds executed in respect of suit properties are not binding on her share but those alleged sale deeds have not filed on record. On the other hand defendant no. 7 and 8 have filed 7x12 extracts and mutation entries of the properties which are not included as suit properties.

9. Further plaintiff has made State Government a party to the suit for acquisition of Bombay Pune National Highway but the National Highway Act specifically barred the jurisdiction of Civil Code to try the suit. On the other hand, plaintiff has filed an application to delete the Highway Authority from the suit but that application is rejected with reasoning. Further objection is about law of limitation. But it is mixed question of fact and law therefore it cannot be decide at the initial stage. Unless and until evidence came on record it cannot

be decided.

10. In view of present application defendant has relied on (1) **Kamal Hiran Hole & Ors. Vs. Atrium Holmes LLP & Ors. 2023(5) ALL MR 487** in which it is held that Maharashtra Court Fees Act (1959), Ss.6(iv)(ha), 6(iv)(g) – Rejection of plaint – On ground that suit is not properly valued – relief seeking declaration that sale-deed executed by defendant is not binding on 3/5th share of plaintiff – Admittedly, plaintiffs are not parties to said sale-deed nor seeking cancellation of sale-deed- in view of S.6(iv)(g) of Act of 1959, plaintiffs are not liable to pay Court fee as per valuation of property sold – Since suit property is permitted to be used for non-agricultural purposes, plaintiffs are willing to revalue suit at Rs. 41,95,800/- and pay total court fee of Rs. 63,630/-. In view of this judgment it is necessary to make proper valuation and to pay sufficient court fee stamp. (2) **Santosh Ramchandra Tadsare Vs. Subhash Ramchandra Gujjar and others** in which Hon'ble Appex Court held that the suit property converted from agricultural to non agricultural property. The valuation of suit property done by respondent no. 1 was correct and the trial court had jurisdiction to entertain the suit.

11. Defendant no. 7 & 8 rightly relied on the above judgment. Therefore plaintiff is directed to make proper valuation of the suit property and pay sufficient court fee stamp as per Section 6(iv)(ha), 6(iv)(g) of the Maharashtra Court Fees Act. Accordingly I pass the following order:

### **ORDER**

(1) Application 41 is partly allowed.

(2) In view of present application plaintiff is directed to make proper valuation of the suit properties and pay sufficient court fee stamp within 20 days from this order.

(3) If, plaintiff failed to comply with the above order present plaint is liable to reject on the ground of in sufficient court fee stamp and valuation of suit property in view of Order 7 Rule 11 (b)(c).

Khalapur  
Date: 28/11/2025

(S.S.Deshmukh )  
Civil Judge, Jr. Div.  
Khalapur.

**Certificate**

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

Court Name	:	Smt. S. S. Deshmukh CJJD & JMFC, Khalapur
Name of Steno	:	Shri. Rakesh S. Patil Stenographer, Grade – III
Date of Order	:	28/11/2025
Order signed by P. O. On	:	28/11/2025
Date of PDF & Order uploaded on :	:	28/11/2025