

CNR No :- MHSI100000332024



:- Regular Civil Suit No. 08/2024 :-

:- Order Below Exhibit-35 :-

Defendant have filed the present application under Order -VII Rule -11 of The Code of Civil Procedure, 1908 (hereinafter referred as 'CPC' in short).

2. It is contended that, the present suit is for declaration and permanent injunction in respect of Survey No. 49A/8. That, as per the plaint the suit property is ancestral property. However, the plaintiff have not sought for partition and considering the provision of section 34 of The Specific Relief Act, such suit is not tenable. Hence, it is prayed that, the plaint be rejected.

3. On the other hand, the defendant filed their say at Exhibit-36 and contested the application denying its contents. It is contending that, there are several other properties other then the suit property in respect of plaintiffs and defendants out of which some properties are jointly held by the parties along with the other 300-350 villagers. Hence, it was not possible for the plaintiffs to seek the partition. Considering the same, it is prayed that, the application be rejected.

4. Perused the application and say. Heard Ld. For defendant and Ld. Advocate for plaintiff. They both argued as per the contents of the application and say respectively. Hence, the same is not reproduced.

5. As per section 34 of The Specific Relief Act, any person may institute a suit for declaration and the Court may in its discretion

make the declaration. It is further provided that, Court shall not make any declaration, if the plaintiff omits to seek further reliefs despite being able to seek such relief then a mere declaration.

6. In the instant suit along with the declaration the plaintiff have also sought for injunction. Section 34 of The Specific Relief Act specifically provides the discretion to this Court to grant or reject the declaration. Under such circumstances, certainly such discretion can be used by the Court at the stage of final judgment. However, rejecting the plaint at this stage would not be justified being very preliminary stage. Considering the same, the plaint is not liable to be rejected. Hence, the present application is liable to be rejected. Accordingly, I proceed to pass the following :-

-:: ORDER ::-

1. Application is rejected with costs.

(Dictated and Pronounced in Open Court.)

Place : Dodamarg.
Date : 18/11/2025.

(Y. P. Bavkar)
Civil Judge (Junior Division),
Dodamarg