

Order Below Exh. 94 in Civil Miscellaneous Application No.32/2019
(CNR No.MHSN020004102019)
(Gabrial Namaji Mohite and Ors.Vs. Kondiba Subarao Awale and Ors.)

This is an application moved by respondent No.4 under Order-VII Rule-11 of the Civil Procedure Code for rejection of the main petition on the ground that, the petitioners have no locus-standi or cause of action to file such application.

2. The applicants have also resisted the application by filing detailed say at Exh.97. They have denied all the contentions in the application.

3. Heard both learned advocates. In support of his argument learned advocate for respondent No.4 relied upon the decision of Hon'ble Apex Court in the case of ***V.O. Duraisamy Mudaliar and Others Vs. Parijathammal and Others, 2016 0 Supreme (Mad) 27.***

4. I have gone through this decision. In this decision the suit was dismissed on a preliminary issue concerning the validity of notices to quit and was remanded in appeal for trial on merits. The original suit was for Injunction Simplicitor against the tenants. During pendency of said suit the plaintiff had died. Therefore, Hon'ble their lordship has observed that,

“the subsequent purchaser is not entitled to maintain the suit in respect of all the properties or reliefs. Therefore, it was held that, the right to sue will not survive to the proposed party therefore, the suit was liable to be dismissed.”

5. However, the facts and circumstances of the case in hand and supra cited decision are totally different. Therefore, it can be said that, the observations of Hon'ble their lordship in supra cited decision

will not be applicable to case in hand.

6. At the outset one has to remind oneself of the principles applicable to an application under Order VII, rule 11 of the Civil Procedure Code. As per Order VII, Rule 11 of the Civil Procedure Code the plaint shall be rejected in the following cases:-

(a) where Order VII, Rule 11 of the Civil Procedure Code 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 written 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.)

Keeping in mind these basic principles, now I would like to discuss facts giving rise to the application.

7. Now turning back to case in hand, original petition is under Section 151 of Code of Civil Procedure for restoration of R.C.S.No.461/2014. Which was withdrawn by one of the plaintiffs as power of attorney holder of other plaintiffs excluding plaintiff No.1, 5 and 6 in said suit. By this petition plaintiff No.1, 5 and 6 in that suit are claiming that said suit was withdrawn by the power of attorney holder and the defendants by the power of attorney holder and the defendants by joining hands with each other to deprive the petitioners from their legal rights. Their consent was not obtained for withdrawal of suit and fraud was played upon them. So also, it was against provisions of law. As the suit was withdrawn so, present plaintiffs have no other remedy available except to file present petition. The cause of action to file the

suit has been shown as fraud and misrepresentation played by respondent No.1(A) in present petition i.e. plaintiff No.12 in R.C.S.No.461/2014. So also, it is their contention that, the cause of action has arisen to them on 14/01/2019.

8. It is now settled law that, for deciding application under Order 7 Rule 11 of the Code of Civil Procedure only the averments in plaint and documents produced by the plaintiff along with plaint are to be considered and defence of the defendants can not be considered at this stage.

9. What is a cause of action has been defined in *Swamy Atmananda Vs. Sri Ramakrishna Tapovanam (2005) 10 SCC 51* and has been reiterated in *Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust (2012) 8 SCC 706*, as being a bundle of facts that are material and relevant for the decision of the case and which are required to be proved by the plaintiff to be entitled for reliefs claimed in the suit.

10. In the present case, in para No.6 of petition Exh.1, the petitioners have made averments in respect of the cause of action specifically in their favour. The proof or disproof of the same is a matter of trial. Accordingly, the contention of the defendant finds no merit.

11. The second objection is in respect of locus-standi to file suit. Respondent No.4 has challenged the locus-standi of present petitioners to file such application. It is his contention that, R.C.S.No.461/2014 was filed by present respondent No.1(A) only in his personal capacity. The plaint in said suit was bearing his signature only and it was withdrawn by him unconditionally. Therefore, present petitioners have no locus-standi to file application for its restoration in the present form.

However, from the documents produced along with list Exh.3, it can be seen that, present petitioners were the plaintiffs in said suit and in title clause as well as prayer clause and verification of respondent No.1(A) i.e. plaintiff No.12 in said suit has specifically contended that, he signed the plaint on behalf of plaintiff Nos. 1 to 11 in said suit. Therefore, whether there was a legal power of attorney executed in favour of respondent No.1 (A) by the petitioners? whether said suit was properly withdrawn? or whether present petitioners have locus-standi to file present petition ? are the questions which are to be decided after taking evidence or after hearing both the parties and can not be decided at the threshold.

12. Locus-standi to file a suit or any application we have to understand the term locus-standi. The term locus-standi can be understood as legal capacity to challenge an act, an order or decision and there is no specific bar in filing any suit. The question whether the plaintiff has locus-standi or not has to be decided after hearing both parties and the locus-standi can not be ground to reject the plaint. Hence, in view of this discussion I have come to conclusion that, application deserves to be rejected. Hence, following order:

ORDER

Application (Exh.94) is hereby rejected.

Date:11/02/2026.
Sangli.

(Vibha P. Gaikwad)
Jt. Civil Judge, Sr. Division, Sangli.

C E R T I F I C A T E

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

Name of the Stenographer.	:D. S. Pawar, Grade-2
Court.	:Jt.C.J.S.D.,Sangli.
Order Date.	: 11/02/2026
Order signed by	
the Presiding Officer on.	: 12/03/2026
Order uploaded on.	: 12/03/2026