

(CNR No.:MHSN02-000795-2012)

**SPECIAL CIVIL SUIT No.68/2012**

*(Order below Exhibit 174)*

1. Defendant No.11 has filed an application for the rejection of the plaint vide Order 7 Rule 11 of Code of Civil Procedure.

2. It is the case of the defendant No.11, the plaintiff filed suit for perpetual injunction and possession. No relief has been claimed against the defendant No.11. The relief which was claimed is not within the jurisdiction of this Court. Hence, he prays for rejection of the plaint against the defendant No.11.

3. The plaintiff filed his say vide Exhibit 175 and resisted the application. According to the plaintiff, many litigations are created due to act of the defendant No.11, therefore, they are necessary parties. Hence, the application filed by the defendant No.11 is not maintainable and deserves to be rejected.

4. Read the application and say. Heard the learned advocates of the both parties.

5. The following points arise for determination and I record my findings alongwith reasons to that as follows;

Sr. No.	Points	Findings
1.	Whether the plaint against the defendant No.11 is liable to be rejected ?	In the negative.
2.	What order ?	Application is rejected.

## REASONS

6. AS TO POINT No.1:-

The learned A.G.P. for the defendant No.11 submitted that, the plaint does not disclose any cause of action against the defendant No.11. The relief which was claimed against him was not tenable, therefore, it is necessary to reject the plaint against the defendant No.11.

7. Shri. M. B. Kulkarni, learned advocate for plaintiff submitted that, the plaintiff claimed relief against the defendant No.11, therefore, at this junction the suit can not be rejected against him.

8. The Order 7 Rule 11 of Code of Civil Procedure states that, the plaint shall be rejected in following cases;

- a) where it does not disclose a cause of action; or
- d) where the suit appears from the statement in the plaint to be barred by any law, it shall be rejected.

**SPECIAL CIVIL SUIT No.68/2012**

**3/4      (*Order below Exhibit 174*)**

9.            It is specifically mentioned in aforesaid provision that, the plaint shall be rejected only if it appears from the statement in the plaint to be barred by any law. Even, if the expression from the statement in the plaint is given liberal meaning, the documents filed with the plaint may be looked into, but nothing more. It is settled principle of law that, power of rejection of the plaint should not be executed except in clear case. If, there is any serious question to be decided, it is proper to the Court is to let the matter proceed further and determine it on merit.

10.           Perused plaint, it discloses the cause of action. The plaintiff specifically mentioned when the cause of action arose. The plaintiff has filed the suit against total 11 defendants. The defendant No.11 is one of the defendant in the suit. Order 7 Rule 11 of Code of Civil Procedure does not justify the rejection of the plaint on the particular portion of the plaint. If, the plaint discloses cause of action, it cannot be rejected. The concept of the partial rejection is apparently inapplicable. If, defendant No.11 has been added without necessity, then there should be a partial rejection of a pleading under Order 6 Rule 16 of Code of Civil Procedure. But, not rejection of the plaint. I therefore, answer point No.1 in the negative.

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11. **AS TO POINT No.2:-**

I answered point No.1 in the negative, therefore, it can be said that, the application filed by the defendant No.11 deserves to be rejected. Hence, I pass the following order;

**ORDER**

1. The application is rejected.

Sangli.

Date:-23/08/2018

Sd/-

(V. R. Patil)

III<sup>rd</sup> Joint Civil Judge Senior Division,  
Sangli.