

MHSN020015092025

**ORDER BELOW EXHIBIT NO. 12 IN R.C.S. No.
198/2025****Ujjwala Kuber Patil +1
Vs.
Lata Hirachand Aagre**

This is an application for rejection of the plaint as per Order 7 Rule 11(d) of the Code of Civil Procedure (hereinafter referred as the C.P.C. for the sake of brevity).

2. The defendant filed this application and contended that, the suit is based on will dated 02.12.2022 executed by late Chandrabai Shamgonda Patil. The said will has already been proved in the testamentary proceeding and letter of administration has been granted by the Civil Court Sr. Division Sangli in Civil M.A. 201/2023, as no objection was received. Since the will already been accepted by the competent Court, the plaintiffs can not seek declaration that it is not binding. Therefore according to the defendant the plaint does not disclose any cause of action and is barred by law vide Order 7 Rule 11(d) of CPC.

3. The plaintiff filed say and objected the application. The plaintiffs contended that, the application is filed on the basis of false and misleading averments. The present suit is initially partition, declaration and injunction. The plaintiff is seeking declaration that the alleged will is not binding on his share. Merely because letters of administration has been granted, it does not extinguish the plaintiffs individual civil right. The defendant herself relief upon the will and

the mutation proceeding, therefore the plaintiffs were compelled to challenge its effect this application is nothing but filed with intent to delay the trial. Hence, it be rejected with cost.

4. Before moving forward let's see the case of plaintiffs which is as under-

The plaintiffs stated that, the suit property was originally owned by Kuber Patil. Late Chandrabai Patil never had share in it. After the death of Kuber Patil, the property continued to remain joint and no lawful partition ever took place. After the death of Kuber, Chandrabai Patil initiated proceeding regarding succession and orders were passed in those proceeding. The plaintiffs have challenged the said order before District Court by filing an Appeal. During the pendency of appeal, Chandrabai Patil died and consequently appeal came to be disposed of. According to the plaintiffs, no partition had ever taken place between the legal heirs. Late Chandrabai Patil was never the exclusive owner of the entire property. Despite, Chandrabai Patil executed registered will dated 02.12.2021 in favour of the defendant no. 1 in respect of suit property. The plaintiffs contend that the will is illegal, void and ineffective as late Chandrabai could not have bequeathed entire joint property. The plaintiffs have contended that, the cause of action arose when the defendant no. 1 obtained the letter of administration and when she attempted to mutate her name in the revenue

records and when she asserted exclusive ownership over the suit property, on the strength of alleged will and there was apprehension that the defendant no. 1 good alienate the suit property and thereby affecting the plaintiffs rights. Therefore, the plaintiffs filed the suit for declaration that a will dated 02.12.2021 executed by Chandrabai Patil in favour of the defendant no. 1 is illegal, void and not binding upon the plaintiffs share declaration that the letter of administration obtained on the basis of said will do not affect the plaintiffs right and permanent injunction restraining the defendants from creating third party rights, alienating, transferring or interfering with the plaintiffs possession and enjoyment of the suit property.

5. Perused the record. Heard both sides. The following points arise for my determination. I have recorded my findings against each of them for the reasons as follows:-

Sr. No.	POINTS	FINDINGS
1.	Whether the plaint is barred by law?	No.
2.	What order?	As per final order.

: REASONS :

6. Before proceeding with the reasoning, I am aware that, it is settled position of law that for deciding application under Order 7 Rule 11 of the C.P.C., averments made in the plaint are germane. For deciding the application under Order 7 Rule 11 of the C.P.C., the

Court has to see face of the plaint and not the contention made in the Written-Statement or otherwise.

Point No.1 :-

7. I have given consideration to the contentions of the application and say filed thereon. On perusal of plaint, it appears that, the plaintiffs claim that the suit property originally belong to late Kuber Patil and that after his death, the property continued to remain joint. The plaintiffs specifically lead that, no partition has ever taken place by metes and bounds and they continued the possess an undivided share in the property. Upon the perusal of pleadings in the plaint it clearly disclose the existence of Civil dispute relating to title, succession, partition and injunction.

8. The principal contention raised by the defendant is that, competent Court has already granted a letter of administration. Therefore, the present suit is barred by law. This contention can not be accepted at the preliminary stage. The grant of letter of administration and its effect are matters which may constitute a defence available to the defendant. However, the said question can not be decided while exercising the jurisdiction under Order 7 Rule 11 of CPC. The questions related to - whether the alleged will is binding upon the plaintiffs undivided share and rights, whether the property was joint family property, whether the Chandrabai possesses testamentary power over the entire property and whether the plaintiffs are entitled for the relief claimed, are all disputed

issued requiring adjudicating after evidence. Merely because letter of administration has been granted, can not by itself lead to conclusion that every subsequent civil suit touching upon the proprietary rights is barred. The effect of grant and the binding nature thereof are the matters which for the consideration during trial. Therefore for the reasons recorded above, as these questions can not be decided without appreciating evidence, rejecting plaint at the threshold would amount to deciding the suit without trial and it is not permissible in the eye of law.

9. In result, for the reasons recorded above, I am of the opinion that, there is no substance in the contentions of the application and therefore, I answer the point no. 1 as negative.

Point No. 2 :-

10. Looking to the nature of relief claimed and reasons as above, I am not inclined to allow this application. In result, I proceed to pass following order ;-

ORDER

- 1) The application is rejected.
- 2) No order as to cost.

Date :- 21/07/2026.
Sangli.

(Rohini S. Patil)
3rd Jt. Civil Judge (Jr. Dn.),
Sangli.