

**ORDER BELOW EXH.47 IN R.C.S.NO. 165/2018**

{Smt. Champabai Desai V/s Ahilyabai Kadam}

1. The defendants No.11 to 15 have filed this application u/o.VII, rule 11(a) and (d) of C.P.C. stating that the averments of the plaint does not disclose the cause of action for the suit. Further plaintiff claimed declaration about the sale deed and adoption deed which is barred by law of limitation. Plaintiff has not pleaded specifically about her lawlul possession and obstruction to that possession by the defendants. Plaintiff also not pleaded that how she will get share in the suit property. Hence, upon these reasons defendants prayed for rejection of the plaint
2. Plaintiff by filling her say at Exh.49, stated that at para 10 of the plaint, cause of action of the present suit is specifically stated. The issur of limitation does not come under the purview of O.VII,rule 11(a) and (d) of C.P.C. It is a mixed question of fact and law, which will be decided at the time of trial of the suit. Only to delay the proceeding, defendants have filed this application. Hence prayed for dismissing the application with cost.
3. Read application and say. Heard Ld. Advocates for both the patries. Read plaint and perused the record.
4. Initially suit is for partition, separate possession and declaration. Plaintiff pleaded that suit property is her ancestral property and defendant is obstructing her joint possession over the suit property. When plaintiff asked her about partition then she came to know about the execution of adoption deed and sale deed. Therefore, she filed the present suit.

5. The object of O.VII, rule 11 of C.P.C. that, to dispose off infructuous litigation if the parties to the suit bring to the notice of the court that the facts and circumstances which have made the pending litigation infructuous. If the plaint suffers from a fatal infirmity with regard to the requirement which the plaintiff is expected to include in the plaint so as to make it maintainable in the eyes of law, it can be rejected under the said provision.

6. According to the defendants non pleading of legal possession, obstruction and time barred relief of declaration makes the suit infructuous and is not maintainable in the eyes of law. For that purpose I have gone through the entire pleading of the plaint. It is the case of the plaintiff that suit property is her ancestral property and she is the joint owner and possessor of the suit property alongwith defendant no. 1 to 11. This fact of joint possession can be proved only at trial. At the preliminary stage in the absence of evidence, this court would not come to the conclusion that the plaintiff has not any ancestral right in the suit property.

7. Article 56 of the Limitation Act provides limitation of three years from the date of knowledge for declaration of an registered instrument and Article 57 of the said Act provides three years limitation from the date of knowledge for declaring adoption deed is invalid etc. In this present suit also, plaintiff alleged that she got knowledge about alleged sale deed and adoption deed in December 2017. This issue involves matter of fact as well as matter of law, which will be decided only at trial after taking evidence of both sides.

8. Thus the objection raised by the defendants in this application does not make this infructuous but maintainable in the eyes of law. I found no

merit in the application of the defendant for rejecting the plaint. Further it seems from the record that plaintiff is a 92 years old lady and this application has been moved only to delay the suit proceeding. Hence, I pass following order.

**ORDER**

1] Application is rejected.

Miraj.  
Date -20/07/2019

Sd/-  
( U. P. Koli )  
2<sup>nd</sup> Jt. Civil Judge, Jr. Div., Miraj.