

**Order below e application in RCS 94/2024
Nirmala Sushant Aratal Vs Anusaya Pujari and Ors**

The e-application is under Order 7 Rule 11(b) of the Code of Civil Procedure, 1908 (the CPC) on behalf of defendant 2.

2 Perused the application, say, and the record.

3 Heard both the sides.

4 Brief facts of the plaint:- The suti is for partition claiming it to have been purchased out of joint family income, further challenging the sale-deed by defendant 1 in favor of defendant 2, and decree of perpetual injunction, in the suit property more particularly mentioned in para 1 of the plaint.

5 Brief facts in the application:- The application is premised on the ground, that the plaintiff has sought and thereby sought a declaratory relief that the sale-deed by defendant 1 in favor of defendant 2 dated 26/04/2022 is not binding on her share. The sale-deed mentions consideration of Rs.10,35,000/- (Rs.Ten Lakh Thirty Five Thousand only) and accordingly, the suit has not been valued on the sale consideration. The suit is under valued. Hence, it would be prayed that the plaint be rejected.

6 Brief contentions of the plaintiff:- The application is opposed on the ground that the application is misconceived. The plaintiff has not sought a relief of cancellation of the sale-deed and therefore, it is not necessary to pay the court fees on the face value of the said deed. The valuation is just and proper. Therefore, it would be prayed that the application may kindly be rejected.

7 The following points arose for my determination to which I record my findings together with the reasons thereof:-

Sr. No.	Points	Findings
1	Whether the plaint is under valued and	No

liable to be rejected under Order 7 Rule 11(b) of the CPC?

2 What order ?

As per final order.

REASONS

Point 1 :-

8 It is settled law, that while considering an application under Order 7 Rule 11 of the CPC, the averments in the plaint are germane and defence taken in the written statement is wholly irrelevant. The averments have to be considered vis-a-vis the reliefs claim. How to value the suit is a matter for the plaintiff.

9 Further, it is settled law, that the valuation has to be made by the plaintiff under Order 6 of the CPC and as per Section 6 of the Maharashtra Court Fees Act 1959 (the Act). The question of valuation is between the plaintiff and the Court, and even if the court fees is deficiate, the law does not mandate, rejection of plaint, but to offer an opportunity to the plaintiff to rectify and pay the deficiate Court Fees and upon failure the plaint, can be rejected.

10 Now, reverting to the facts at hand, the suit is for partition. Admittedly, the plaintiff has sought a relief by way of declaration that the sale-deed by defendant 1 in favor of defendant 2 dated 26/04/2022 bearing registration No. 1464/22 is not binding on her share and other consequential reliefs. The fundamental relief is the relief of partition. It is settled law, that in a suit for partition, it is not necessary to challenge the alienation or transactions etc., in respect of the suit property. This view is guided by law laid down in unreported judgment of Hon'ble the Bombay High Court (Nagpur Bench) in Second Appeal 588/2005 dt. 21/12/2023 in **Ramrao Tukaramji Dindalkar (dead) via his LRs Vs Rakhumabai Kisanrao Kumare.**

11 If the facts are considered from the view of the Act, the valuation has to be arrived as per Section 6 (vii) of the Act which

provides for making of valuation for share in joint family, as per the provisions of Section 6(v), of the Act, which would apply mutus mutendi.

13 I do not agree with the arguments on behalf of Ld.advocate for defendant 2 that the sale deed of 1983 has not been impeached, for the reason that it is for the plaintiff to claim the reliefs and if ultimately the reliefs can not granted without a fundamental relief certainly the plaintiff has to suffer.

14 The application is premised on Section 6 (ha) of the Act i.e., for avoidance of sale contract etc., In the peculiar facts, since the suit is for partition, the facts are governed by Section 6(v) and (j) of the Act. There is no necessary to pay court fees and on the face value of the deed i.e. ad valorem. The points for determination is answered accordingly. Costs follows the event. Hence, the following

Order

The application stands rejected with costs.

2 Costs in the cause.

Jath
Date: 12/02/2026

(Sanjay P. Bunde)
Jt.CJJD, Jath

**Order below e application RCS 94/2024
Nirmala Artad Vs Ansaya Pujari and Ors**

Order below e-application under Order 18 Rule 17 of the C.P.C.

Persued the application, say, and the record.

2 Heard both the sides.

3 The suit is for partition, and other consequential reliefs. The contested defendants have filed the written statement and combated the claim. This Court has framed issues. The suit is of 2024. Admittedly, the application on behalf of the defendant 2 seeking rejection plaint was pending consideration while the instant order came to be passed.

4 As a matter of fact and record, the said application has been decided, the instant day. Defendant 2 is ready to cross examine the plaintiff's witness the instant day. The reason assigned may be sufficient and supported by affidavit. Even otherwise, disposal on merits is a rule. The suit has not culminated finally. No purpose would be served by denying defendant 2 right to cross examine which is valuable right. The matter can be proceeded with. A final opportunity needs to be granted to proceed with the suit. Hence, the following

Order

The application is allowed.

2 The witness is recalled. The defendants to cross examine the plaintiff's witness. The defendants to be meticulous in future the defendants in the proceedings in the peculiar facts.

3 No order as to costs.

Jath
Date:- 12/02/2026

(Sanjay P. Bunde)
Jt C.J.J.D, Jath