

Order Below Exh.14 in R.C.S.No.58/2025

The present application is filed by defendant no.1 to 4 under order 7 rule 11 of Code of Civil Procedure.

2. It is submitted by defendant no.1 to 4 that the plaintiff has admitted in his plaint that no suit property was originally owned by Rajaram Yashwant Anapat and Gajanan, Bajarang and Parubai are having 1/3 share each in the suit property, therefore defendant no.1 is absolute owner of his share, plaintiffs is not having any concern with the share of the defendant no.1. The defendant no.1 has executed gift deed in favour of defendant no.4 on 09.04.2025, therefore there is no cause of action to file the present suit, the suit is not tenable in the eyes of law, therefore plaintiff prayed that the suit be rejected under O.7 R.11 (A) and (D) of the C.P.C.

3. Plaintiff have filing his say to the present application vide an Exh.17 denied application. It is contended by the plaintiff that the applications is false and frivolous and same is not tenable is eyes of law, i.e. having share in the suit property is not having any right to execute the gift deed in favour of defendant no.4, therefore he prayed that the application is rejected.

4. Heard Ld. Advocate Shri.B.S. Patil for defendant no.1 to 4 and Ld. Advocate Shri.F.N. Kotwal for plaintiff at length.

5. Ld. Advocate for defendant no.1 to 4 submitted that the

plaintiff is not having any cause of action to file the present suit, defendant no.1 is absolute owner of his share, therefore plaintiff is not having any concern with the share of the defendant no.1, therefore the suit is hit by the provision of order 7 Rule 11 (a) (d) of C.P.C., therefore he prayed that application be allowed as prayed and plaint be rejected. He has also filed written notes of arguments at Exh.27. In support of his contention he has relied on following case law.

1. *Mukatlal Vs. Kailash Chand (D) through LR's and others, 2024 AIAR (Civil) 636, wherein Hon'ble Supreme Court of India observed that under Sec.14(1) of Succession Act, Hindu Female must not be possessed of the property but she must have acquired the property and such acquisition must be either by way of inheritance or devise or at a partition or "in lieu of maintenance or arrear of maintenance" or by gift or be her own skill or exertion or by purchase or by prescription.*

2. *RBANMS Educational Institution Vs. B.Gunashekar and another, 2025 (5) Mh.L.j.(S.C.) 99 wherein Hon'ble Supreme Court of India observed that while considering the application under Order 7 R.11 of C.P.C. only averments in plaint are to be considered, where plaint is manifestly vexatious and meritless, court should exercise their power under Order 7 Rule 11, court should not waste judicial time on matters that are legally barred and frivolous.*

3. *Vishwambhar S/o Namadev Nikam and another Vs. Sunanda wife of Maheshankar Suryawanshi and others decided on 03.09.2025 wherein Hon'ble High Court at Bench at Aurangabad has rejected the plaint on the ground that during life time of mother, plaintiff cannot any partition, it is incomprehensible as to why her mother is unable to file suit for partition and possession, as plaintiff is not having any locus standi to file suit.*

6. On the contrary Ld. Advocate for plaintiff argued that the

defendant has filed false and frivolous application, therefore he prayed that application be rejected with cost.

7. Perused the application and record. It is trite law that adjudication upon an application preferred under Order VII Rule 11 of the Code of Civil Procedure, 1908, is circumscribed by the averments contained in the plaint and the documents annexed thereto or relied upon by the Plaintiff. The Court is enjoined to consider the plaint in its entirety and in a holistic manner. It is impermissible to draw sustenance from the defence pleaded by the defendants in their written statement for the purposes of disposing of such application. Accordingly, the pleadings in the plaint alone shall constitute the exclusive substratum for determination of the application under consideration.

8. The defendant no.1 to 4 have, at the threshold, raised an objection as to the maintainability of the suit on the ground that, no cause of action to file the present suit against him, so also suit is barred by law. It is matter of record that, plaintiff has approach to this court and sought the relief of partition, separate possession and injunction against the defendants. It is matter of record that the plaintiff in his plaint contended that the suit property of originally owned by deceased Rajaram Yashwant Anpat and Gajanan, Bajarang and Parubai is having 1/3 share each in the suit property, so also the plaintiff has mentioned cause of action, to file the present suit in the plaintiff, plaintiff has claimed share in the suit property, so far as Parubai absolute owner of her share in view of Sec.14 of Hindu Succession Act

can not be adjudged at this juncture, same is to be proved during the course of trial after both parties to lead their evidence if any, therefore, the authorities relied by the defendant no.1 to 4 are not much helpful at this juncture. Therefore, considering the facts and circumstances of the case the application deserves to be rejected. Hence, I pass following order

ORDER

- 1] The application at Exh.14 is rejected.
- 2] Costs in main cause
- 3] Parties to take this note.

sd/-

Palus.

Date- 01.04.2026.

(M.A.M.J. Shaikh)

Civil Judge Junior Div. Palus.

CERTIFICATE

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

Name of the Stenographer	: Sou.G.A. Patil (Grade-3)
Court	: M.A.M.J. Shaikh, Civil Judge Junior Division & Judicial Magistrate First Class, Palus, Dist. Sangli.
Date	: 01.04.2026
Judgment signed by the Presiding officer on	: 01.04.2026
Judgment uploaded on	: 04.04.2026