

MHSN150008052025



(Ajay Prakash Nikam
V/s.
Prakash Shrirang Nikam-8)

ORDER BELOW EXHIBIT 17 IN
SPECIAL CIVIL SUIT No.58/2025

1. This is an application filed by the defendant No.8 under Order 7 Rule 11 of Code of Civil Procedure for rejection of the plaint for want of cause of action, suit barred by limitation, for want of proper valuation of the suit property and for non payment of proper court fees.
2. Perused application and say of the plaintiff at Exhibit 21. Heard learned counsel for both side.
3. It is the contention of the defendant No.8 that, the plaintiff has filed the present suit for partition, separate possession, as well as, for permanent injunction against the defendants without a valid cause of action. The plaintiff has stated in the plaint that, the sale deed dated 08/06/2022 executed in favour of the defendant No.8 in respect of the suit property is not binding upon the plaintiff. But, while filing the suit, the plaintiff has not properly valued the suit and therefore the suit is not maintainable, unless the deficit court fee stamp is paid by the plaintiff. According to the defendant

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No.8, the relief sought by the plaintiff is not within limitation. Therefore, the suit is also barred by the law of limitation and hence, the plaintiff is not entitled to seek any relief in the present suit. On these major grounds the defendant No.8 has prayed for rejection of the plaint.

4. On the other hand, the plaintiff has resisted the application by submitting that, the application is false and bogus. According to the plaintiff, he is neither executant nor the party to the said sale deed in dispute and he has also not sought the relief of cancellation of the said sale deed and he has merely contended in the plaint that, the sale deed in dispute is not binding upon him and therefore the objection of improper valuation and deficit stamp duty is false. Moreover, according to the plaintiff, he has specifically stated as to how the cause of action arose in paragraph No.7 of the plaint and therefore the reliefs sought by him are within limitation and hence the suit is well within limitation and not barred by any statute. The defendant No.8 has filed the present false application with a view to prolong the matter and therefore, he prayed to reject the application.

5. I have heard both sides at length. Having considered grounds mentioned in the application, submissions made by both sides and the documents on record, following points arises for my consideration. I have recorded my findings thereon for the reasons recorded thereunder.

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Sr. No.	Points	Findings
1.	Whether the suit is maintainable for want of proper valuation and non-payment of proper court fees ?	Yes.
2.	Whether the plaint can be rejected as sought for ?	No.
3.	What order ?	As per Final order.

R E A S O N S

AS TO POINT Nos.1 to 3:-

6. Gone through the record. According to the defendant No.8, the present suit filed by the plaintiff is without a valid cause of action and the reliefs sought by the plaintiff are not within limitation and hence the suit is barred by law of limitation. However, on perusal of plaint, it is seen that, in paragraph No.3 and 7 in the plaint, the plaintiff has specifically stated about the cause of action arose that, as he resides out of state for his business purpose, he was not aware about the transaction in respect of suit property and on 27/01/2025 the defendant No.7 has caused obstruction to his joint possession over the suit property on the basis of his name's mutation entry recorded in 7/12 extract of the suit property and thereafter in last week of January-2025, when the defendant No.1 to 3 refused to the plaintiff for partition and separate possession of the suit property situated at village Mouje Chinchani and Kasabe Vita. So, considering the aforesaid pleading and the nature of the relief

sought by the plaintiff in the present suit, it appears that, the plaintiff had valid cause of action for filing the present suit against the defendants.

7. Thus, on perusal of the contents of the plaint and reliefs sought by the plaintiff in the present suit, it appears that, in the present suit, it is not question of pure law that can be decided solely on the pleading, nor pure question of fact i.e. determined by a jury or evidence alone and therefore the Issue of limitation in the present suit is the mixed question of law and fact. So, it can cannot be decided in summary manner without the evidence by both side. It is well settled principal of law that, in the cases where mixed question is of law and fact, then the plaint cannot be rejected under Order 7 Rule 11(d) of Code of Civil Procedure. Thus, in the present case, the Issue regarding the limitation being the mixed question of law and fact, it can not be decided without the evidence of both parties. Therefore, in the present case, at this stage on the issue of limitation it will not just and proper to reject the plaint under Order 7 Rule 11(d) of Code of Civil Procedure.

8. So far as, proper valuation of the suit is concerned, the plaintiff has contended in the plaint that, the sale deed dated 08/06/2022 executed by the defendant No.1 in favour of the defendant No.8 in respect of the suit property is not binding upon him. Admittedly, in the present suit the plaintiff is neither executant, nor party to the said sale deed in dispute. Thus, the plaintiff has not made any specific prayer in respect of the said sale

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deed in the prayer clause 13 of the plaint. The valuation of the suit for the purpose of the court fee and jurisdiction is generally determined by the substance of the relief sought by the plaintiff in the plaint. Therefore, in the present suit, as the plaintiff has not sought the specific prayer for declaration that, the sale deed in dispute is not binding upon him in prayer clause of the plaint and therefore, there is no need to value the suit upon the market value in the sale deed in dispute and to pay the court fees stamps for the prayer, which is not sought in prayer clause in the plaint by the plaintiff.

9. So far as, the property described in clause 1/B of the plaint is concerned, the plaintiff has valued the suit as per the valuation letter issued by Sub-Registrar dated 22/01/2025 i.e. at the rate of Rs.1,920/- per square meter, which is already produced on record. On careful perusal of said valuation letter dated 22/01/2025 on the the record, it is seen that, the said valuation rate in respect of suit property in clause 1/B of the plaint of Rs.1,920/- was applicable till 31/03/2025. However, the plaintiff has filed the present suit on 11/08/2025 and therefore, the plaintiff ought to have value the suit property described in clause 1/B as per the valuation rate applicable on 11/08/2025. The defendant No.8 has produced on record the valuation letter of Sub-Registrar dated 26/11/2025 in respect of the said suit property described in clause 1/B, which clarifies that, the valuation rate in respect of the said property of Rs.2,120/- per square meter is applicable till

31/03/2026. Therefore, in the present case, it will just and proper to direct the plaintiff to make proper valuation of the suit and to pay the deficit court fees, as per the valuation rate applicable on the date of filing of the suit or as per the valuation letter dated 26/11/2025 submitted by the defendant No.8 on record.

10. The scope of the hearing and jurisdiction while entertaining the application under Order 7 Rule 11(b) of Code of Civil Procedure is limited. The provisions to Order 7 Rule 11(b) of Code of Civil Procedure is quoted below for reference;

**ORDER VII
PLAINT**

11. *Rejection of plaint.*- *The plaint shall be rejected in the following cases:-*

- (a)
- (b) *where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c)
- (d)
- (e)
- (f)

11. The plaint can be rejected vide Sub-rule (b) of Rule 11 of Order 7 of Code of Civil Procedure, when after inquiry it is found that, the relief claimed is under valued and despite direction, plaintiff failed to correct the valuation within the fixed time. In the present case, till date direction was not given to the plaintiff for proper valuation of the suit. Therefore, there is no question of recording finding that 'plaintiff is failed to correctly value the suit'.

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12. As such, the application is pre-matured and cannot be considered unless there is failure of the plaintiff to correctly value the suit, after direction of the Court. Thus, without any direction of valuation of the suit to the plaintiff, plaint cannot be rejected directly. Hence, the application is not tenable at this stage. The plaintiff ought to have filed an application vide Section 8 of the Court Fees Act for proper inquiry. Therefore, the suit is tenable, though, prima-facie it can be seen that, the suit is not properly valued as per the valuation rate applicable on the date of institution of the present suit. Hence, by issuing proper direction to the plaintiff, the plaintiff can value the suit properly, if required and the defendant No.8 could file such application in future, if required. Therefore, I record the findings to point No.1 and 2 accordingly. In answer to point No.3, following order is passed.

ORDER

1. The plaintiff is directed to make proper valuation of the suit and to pay the deficit court fees, as per the valuation rate applicable on the date of filing of the suit or as per the valuation letter dated 26/11/2025 submitted by the defendant No.8 on record, in respect of suit property described in clause 1/B of the plaint. Assistant Superintendent to note & report accordingly.
2. The application being not maintainable at this stage, the suit is found maintainable and thus the application rejected.
3. Costs in cause.

Vita.
Date: 09/12/2025

(Dnyaneshwar S. Patale)
Jt. Civil Judge Senior Division, Vita.

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

Name of the Stenographer : S. P. Pethkar.

Court : Jt. Civil Judge Senior Division, Vita.

Judgment/Order signed by
the Presiding Officer on : 09/12/2025.

Judgment/Order uploaded on : 15/12/2025.