

ORDER BELOW EXH.25 IN.No. R.C.S.No. 4 of 2013

Present application is filed by defendant No.1 to reject the plaint under Order VII Rule 11 of the Code of Civil Procedure.

2 It is asserted that the plaintiff has suppressed the material facts. He is not the son of defendant No.1. There is no relation between them. He is not having information about the properties owned and possessed by defendant No.1. Plaintiff has simply stated that he is son of defendant No.1. However, he stated nothing about identity of his mother. He has not stated the parental village of his mother; date and place of his birth; who has brought him up; since when his mother is missing and whether his mother is dead or alive. He is not the son of defendant No.1 and hence he has not furnished the relevant details.

3. It is further asserted that the plaintiff has pleaded that he was cultivating the land by residing with defendant No.3. However, he has suppressed the facts in respect of defendant No.3. She is no more and her two sons are her successors. Date of cause of action is wrongly mentioned in the plaint. He has not given the complete information in respect of a person namely Narsude. Suit is without cause of action and that Narsude (person) is not in existence. It is further asserted that Revati was the wife of defendant No.1. She has obtained customary divorce from defendant No.1 and left the village in the year 1987. She was residing in her parental home since before 8-9 months of customary divorce. She was not pregnant at the time of obtaining customary divorce. Customary divorce took place in the presence of defendant No.3. It shows that the plaintiff is not the son of

defendant No.1. Hence, the application.

4. Plaintiff has filed his say and opposed the application. According to him, the application is false. Defendant No.1 is having more information than him in respect of his mother. Husband of defendant No.3 is added as the defendant. Defendant No.1 is the father of the plaintiff. He would prove the said fact. If needed, he will apply for the D.N.A. test. Plaintiff cannot be rejected on the grounds mentioned in the application. Prayer of defendant No.1 in the present application is illegal. He has, therefore, prayed for rejecting the application.

5. Perused the record and proceedings and particularly notes of arguments (Exh.33) submitted by the learned advocate representing defendant No.1. Heard the learned advocate representing the plaintiff. Only point which arises for consideration is : Whether defendant No.1 has made out a case to reject the plaintiff ?

6. Before proceeding further, it may be noted here that the suit is for partition and separate possession. Defendant No. 1 has submitted his written statement at Exh. 24. In the written statement, he has denied that the plaintiff is his son. He has filed the present application along with the written statement. According to the plaintiff, defendant No.1 is his father. Defendant No.2 is the brother and defendant Nos. 3 and 4 are the sisters of defendant No.1. Defendant No.1 has denied the relation with the plaintiff. Whether the plaintiff is the son of defendant No.1 is a question of fact. A question of fact cannot be answered without

giving an opportunity to the parties to lead the evidence. To put it differently, a question of fact cannot be answered without recording the evidence. It can only be answered after the trial. Plaintiff has submitted that he can prove that defendant No.1 is his father. He went on to submit that he may apply for D.N.A test, if needed. At this stage, there is no material before this Court to answer the disputed fact.

7. Order VII Rule 11 of the Code of Civil Procedure provides that the plaint can be rejected under clauses (a) to (f). It nowhere provides that the plaint can be rejected upon a disputed question of fact. Present case does not fall under any of the clauses of Rule 11 of Order VII of the Code of Civil Procedure. Defendant No.1 has failed to make out a case to reject the plaint. Plaint cannot be rejected on the grounds mentioned in the application. Hence, the application stands rejected.

Date: 27.10.2016.

(S.K. Khan)
Jt. Civil Judge (J.D.),
Barshi.

CERTIFICATE

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

Name of Stenographer	:	Bhaskar G.B.
Court Name	:	S.K.Khan, Jt.C.J.J.D.& J.M.F.C. Barshi.
Date	:	27.10.2016
Judgment signed by the presiding officer on	:	27.10.2016
Judgment uploaded on	:	27.10.2016

