

Order below Exh.93 in R.C.S.No.157/2014

Defendant Nos.2 to 4 have moved this application for rejection of plaint *vide* Order VII Rule 11(a) of the CPC claiming that the plaint does not disclose a cause of action against defendant Nos.2 and 3 in this suit and suit is not filed within limitation. Defendant no.2 and 3 have not filed any supportive affidavit to present application.

2. The application is strongly resisted by the plaintiffs *vide* their say Ex.94 on the ground that they have clearly mentioned the cause of action to the suit in the plaint and suit is well within limitation. Accordingly, it is prayed that the application is without merits and same may be rejected. Perused application, say and record. Heard both the sides.

3. At the outset, it may be noted that present application is moved mainly on two grounds. Firstly, on the ground that defendant Nos.2 and 3 are unnecessarily impleaded in this suit and no cause of action is mentioned against them. As far as ground of absence of cause of action against defendant no.2 and 3 in plaint is concerned, the plaint is liable to be rejected, if it does not disclose any cause of action *vide* Order VII Rule 11(a) of the CPC. For ascertaining whether the plaint discloses cause of action to the suit or not, the averments made in the plaint only can be considered.

4. From perusal of plaint, it is clear that the plaintiffs, *vide* Clause (12) of the plaint, have specifically mentioned cause of action to the present suit. According to them, notice sent by plaintiff to defendant no.1 in the year 2008, execution of sale deed in the year 2012 and knowledge of facts in the year 2014 are causes of action. According to defendant no.2 and 3, there was no cause of action against them or no reason to file present suit against them.

Admittedly suit is for partition. Rights of all the parties are involved in the suit property. Decision of suit will affect the rights of all parties. There are pleadings against all the defendants. Cause of action is bundle of facts. Now, whether the cause of action mentioned in the plaint is real or imaginary is a matter of trial and conclusion in that regard can be arrived at only after affording both the parties, opportunity of being heard and opportunity of adducing evidence. The plaint has to be rejected *vide* Order VII Rule 11(a) of the CPC., if the plaint does not disclose any cause of action to the suit. However, as discussed earlier, the plaint clearly discloses causes of action to this suit. Accordingly, point No.1 is answered in the affirmative.

5. As far as second ground i.e. suit is not filed within limitation is concerned, it is settled principal of law that issue of limitation involves mixed question of fact and law. Therefore it can not be ascertained prior to conclusion of trial. In present suit, evidence of plaintiff is completed and now suit is pending for evidence of defendant. Defendants are having remedy to put their evidence on the point of limitation. Therefore, the plaint is not liable to be rejected on any of the grounds mentioned in present application. Thus, the prayer of rejection of plaint *vide* Order VII Rule 11 of the CPC is liable to be rejected.

ORDER

1. The application stands rejected with costs.
2. Since the suit is old & in Pendency Reduction Drive, parties are directed to conduct the suit on top priority.

Date:- 06/04/2026.

(P. S.Govekar)
Civil Judge, J.D., Mohol.