

MHST140007772025

**ORDER BELOW EXH.NO.14 IN R.C.S NO.89/2025****(Ashwini Amol Jagadale V/s. Usha Sachin Jagatap & Ors.)**

The defendants have filed present application under Order VII, Rule 11 of Code of Civil Procedure for rejection of plaint. According to defendants, plaintiff has suppressed material facts from the Court. Plaintiff did not mention in the plaint of previous partition of suit property. Plaintiff did not claim partition in present suit and claim only perpetual injunction, which is not tenable as per Section 41(h) of the Specific Relief Act. The plaintiff has other efficacious remedy of partition, however she did not claimed it. In present suit legal heirs of Mahadeo Jagatap are necessary parties, however, they not made parties. The plaintiff also did not added all other properties in the suit. Therefore, suit of plaintiff is not tenable. Hence, defendants prayed to reject the plaint.

2. Plaintiff has filed her say at Exh. No.17. According to her, the defendants have filed a false application. Defendant no.1 is her deceased brother's wife. Her father Mahadeo Jagatap was died on 23.02.2022. Her mother Shalan Jagatap also died on 10.07.2007. Plaintiff, her deceased brother Sachin, her sister Rasika Yadav, Shital Pawar and Priyanka Mohite are legal heirs. Suit property is her ancestral property. However, father of plaintiff

mutated suit property to the name of his son. Actually, no partition was taken place of suit property. The defendants have filed false application only to prolong the matter. Plaintiff has stated the cause of action to file the suit, she has paid proper Court fee stamp. Therefore, she prayed to reject the application.

3. I read application and say. Heard the learned Advocates of both parties. The defendants have filed said application for rejection of plaint under Order VII Rule 11 of C.P.C. Before going into details of application, it is worth to mentioned here some valuable observations of Hon'ble Supreme Court in Kuldeep Singh Pathania V/s. Bikaram Singh Jaryal (2017) 5 SCC 345. It is held that, "Plaint cannot be rejected based on allegations made by defendant in his written statement or in his application for rejection of plaint. Court has to read entire plaint as whole to find out whether it discloses cause of action or not. If plaint discloses cause of action, then it cannot be rejected under Order 7 Rule 11 of C.P.C. Whether plaint discloses cause of action is question of fact, and it has to be gathered on the basis plaint averments taking them to be true. As long as plaint discloses cause of action, mere fact that plaintiff may not succeed in suit cannot be a ground for rejection of plaint."

4. Thus from the ratio laid down by Hon'ble Apex Court in judgment cited supra, it is cleared that while deciding application for rejection of plaint only averments in the plaint need to be taken into consideration. Such averments of plaint can be

taken as true. What defences taken by defendant in written statement or application under O-VII, R-XI of C.P.C. or even the fact that plaintiffs will not succeed in suit etc. factors are not relevant at the time of deciding application filed under O. 7 Rule 11 of C.P.C. Thus, while deciding application filed under Order 7 Rule 11 of C.P.C., I have restricted my consideration to the averments of plaintiff only.

5. For the reasons noted above, I read the entire plaint of plaintiff. Plaintiff has filed present suit for perpetual injunction against defendants. In present suit the plaintiff stated that, suit property is her ancestral property and partition was not taken place. If defendants alienate the suit property then, plaintiff will be deprived of her share in the suit property. The plaintiff in the suit has stated that, on 15.03.2025 when she asked partition of suit property and separation of her share, defendants refused and told her that, they will sale out the suit property. It shows cause of action to file the suit. The plaintiff also paid proper Court fee for the relief claimed in the plaint of the suit. Whether the property is ancestral or not, whether all the co-parcener are parties or not, whether all ancestral properties are added or not etc., questions can not be taken into consideration while deciding the application under Order VII Rule 11. The aforesaid questions required evidence and will be decided at the time of trial.

6. Whether the simplicitors injunction suit is maintainable or not, whether plaintiff has other efficacious remedy available or not etc., questions also not material at this juncture. Particularly,

Section 41(h) of the Specific Relief Act can not be considered at this stage. Therefore, I found no substance in the grounds stated by defendants in the application of rejection of plaint. On perusal of citation i.e. Satish Bahadur V/s. Hans Raj & Ors, AIR 1980 Panjab & Haryana 351, Kishan Singh V/s. Sucha Singh 2008(2) Civil Court Cases 755(P & H), it reveals that, facts and circumstances of the judgment are different than the facts and circumstances of this case. Therefore, in my humble opinion, aforesaid judgments are not applicable to present case.

7. Thus, the application did not contain any justified ground as per Order VII Rule 11 of C.P.C. for rejection of plaint. In result, the application liable to be rejected. Hence, the following order.

ORDER

Application for rejection of plaint is rejected.

Phaltan
Date:- 28.07.2025

(A. S. Satote)
2nd Jt. Civil Judge Jr. Dn., Phaltan