

MHST200000052020



Spl. C. S No.03/2023
Manohar vs Suman

ORDER BELOW EXH.340

Defendant No.1B has filed an application for rejection of the plaint under Order VII Rule 11 (d) of the Code of the Civil Procedure, 1908.

02. The contentions of defendant No.1B are that, the suit is for declaration regarding the Will dated 22/02/1987. However, the present suit is filed in the year 2002. The declaration that the will dated 22/02/1987 is not binding on the plaintiffs, was sought. The suit should have been filed within the period of three years. However, the suit is not filed within limitation. Therefore, suit is barred by limitation.

03. The plaintiffs opposed the application.

04. Heard learned advocate.

05. The provisions of Order VII Rule 11 CPC, 1908 read as under-

The plaint shall be rejected in the following cases-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

06. While deciding the application for rejection of the plaint under Order VII Rule 11 CPC, 1908, only contents of the plaint are relevant.

07. Perusal of the plaint, clearly reveals the pleadings that the plaintiffs first time learnt in the month of June 2001, that defendant

No.1 has entered her name in the record of city survey with respect to the suit property on the basis of the said Will. Therefore, plaintiffs issued notice dated 01/04/2002 to defendant No.1 and 2 to effect the partition. However, they refused to effect partition alleging existence of the Will. Therefore, the suit was filed.

08. The suit appears to have been presented on 03/10/2002, which was registered on 07/10/2002. According to the plaintiffs, they learnt about the entry in the city survey by virtue of the said will in the year 2001.

09. In view of the pleadings of the plaintiffs, it appears that in the present case the issue of limitation is a mixed question of law and facts. Resultantly, the plaint cannot be rejected. Moreover, the defendants had filed an application long back for rejection of plaint, and the application has been rejected. The defendants did not challenge the said order. In view of these reasons, the instant application is liable to be rejected. Resultantly, the following order is passed :

ORDER

1. Application (Exh.340) is rejected.
2. Parties to take note.

Wai
Date: 05.08.2025

(A.G.Deshmukh)
Civil Judge Senior Division, Wai
Dist-Satara.

CERTIFICATE

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

Name of the Stenographer	:-	G.M.Kulkarni (Steno Grade-II)
Court	:-	Civil Judge Senior Division, Wai. Dist. Satara.
Date	:-	05.08.2025
Order signed by the presiding officer on	:-	05.08.2025
Judgment/order uploaded on	:-	06.08.2025