

MHTH170030522025



ORDER BELOW EXHIBIT 18 IN R.C.S. NO. 100/2025
(Anusaya Raman Sankhe and Anr. Vs. Pragati Shital CHS Ltd. and Ors.)

1. The main suit is filed praying for declaration of ownership and permanent injunction. The present Application is preferred under Order 7 Rule 11 of the Code of Civil Procedure. *Vide* say (Exhibit 27), the Plaintiffs have vehemently opposed the present Application. Heard at length Ld. Advocate Shri. Suraj Jagtap for the Defendants and Ld. Advocate Shri. R.R. Pal for the Plaintiffs. Perused record.

2. *Vide* the present application, it is contended that, the Plaintiffs have sought declaration of ownership over area of 1026.41 Sq. Mtrs. in the suit property bearing survey No. 30, Hissa No. 1, Plot No. 1 at Katkar, Palghar. They have also sought directions to decide which portion belongs to them. It is submitted that,

(i) That, the present suit and declaratory relief are intended to challenged the Defendants right to full conveyance and no cause of action is made out. Hence, the suit is barred by law and the plaint is liable to rejected *vide* Order 7 Rule 11(d) of CPC.

(ii) The Plaintiffs are claiming that they came to know about the deemed conveyance upon publication of notice by the DDR, Palghar and portion of the land that is sought to be conveyed is disputed by the Plaintiffs. The said notice was published on 14.05.2025. However, such publication does not give rise to civil cause of action where there is no denial of legal right and where no possession is disturbed and no active interference is shown by the

Defendants. Special Civil Suit No. 49/2018 seeking declaration and injunction against Defendant is pending. RCS No. 6/2020 was withdrawn unconditionally in Lok-adalat. Writ petition No. 14260/2022 is pending before the Hon'ble Bombay High Court and objection was taken before the Collector in the year 2020 resulting in cancellation of the N.A. permission. The present suit is meaningless and meritless and must be rejected. That, as the Plaintiffs have earlier filed similar suits, the present suit is barred by virtue of *res adjudicata* and constructive *res adjudicata* vide Section 11 of the CPC.

(iii) That, the Plaintiff has not disclosed that, since 2013, the Defendants are seeking conveyance and letters were issued to the Plaintiff and the developers. The Plaintiffs have not disclosed that, they had withdrawn the earlier suit in 2020 and regarding pendency of Special Civil Suit No. 07/2020 and the Collector's hearing on N.A. Order and the cancellation of the N.A. order. That, there is suppression of material facts and abuse of the process of the Court.

(iv) That, the suit is barred by limitation as the dispute arose in the year 2013.

Hence, it is prayed that, the present application may kindly be allowed as prayed.

3. *Per contra, vide* say (Exhibit 27) the Plaintiffs have vehemently opposed the present application. It is submitted that,

(i) The present application was filed prior to filing of say to the application for temporary injunction (Exh.5) and the written statement. The averments therein are denied.

(ii) Even if the proceeding under MOFA and before the

DDR are considered to be pending, only a civil Court has the powers to decide ownership over property. The DDR does not have any authority to decide on the issue of ownership. Hence, there is not bar as to the jurisdiction of this Court, nor is the suit barred under any law.

(iii) That, the cause of action is mentioned in the plaint.

(iv) There is no suppression of material facts. There is no abuse of process as alleged. That, there is no need to reject the plaint on this ground.

Hence, it is prayed that, the present application may kindly be rejected.

4. Based on the aforesaid, the question to be considered before this Court is whether the prayer sought can be granted under Order 7 Rule 11 of the CPC. The said question is answered in the negative. The reasons for the same are given below. Let us examine the facts vis-à-vis the law.

5. Order 7 Rule 11 of the Code of Civil Procedure is reproduced hereinbelow for reference:-

“Rejection of plaint .- 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 written 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;*
- e. Where it is not filed in duplicate;*
- f. Where the plaintiff fails to comply with the provisions of rule 9:*

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 for 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.” (emphasis supplied)

6. The law regarding Order 7 Rule 11 CPC is well settled. The Court is expected to look at the facts averred in the plaint to determine if the plaint is liable to be rejected. The defense brought forth may not be examined, but the averments in the plaint have to be considered.

7. Learned Advocate for the Defendants has relied upon the judgment of:-

- i) The Hon'ble Supreme Court in *T. Arivandandam Vs. T. V. Satyapal and Another* [1977 AIR 2421] regarding rejection of plaint when the suit does not disclose a clear right to sue and drafting appears to be merely for creating the illusion of the cause of action.
- ii) The Hon'ble Supreme Court in *Rajendra Bajoria and Others Vs. Hemant Kumar Jalan and Others* [LL 2021 SC 483] regarding rejection of plaint when the suit discloses no cause of action and reiterating strict adherence to conditions enumerated under Order 7 Rule 11 of the CPC.
- iii) The Hon'ble Supreme Court in *Shri. K. Jayaram and Ors. Vs. Bangalore Development Authority and Ors.* [LL 2021 SC 719] regarding suppression of material facts.
- iv) Judgment without names of parties or endorsement of the Court stated to be of the Hon'ble High Court of Telangana in Writ Appeal No. 537/2023 regarding suppression of material facts.

8. Learned Advocate for the Plaintiffs has sought to distinguish the said judgments on the facts of the present case. It is also submitted that, in the present case cause of action is specifically mentioned in the plaint and at the stage of rejection of plaint the Court can only rely upon the averments in the plaint and not on documents submitted by the Defendants. It is also submitted that, the judgments in *Shri. K. Jayaram (supra)* and by the Hon'ble Telangana High Court do not deal with rejection of plaint on that ground and were pertaining to the writ jurisdiction of the Hon'ble High Court.

9. *Per contra*, Learned Advocate for the Plaintiffs has relied upon the judgment of:-

- i) The Hon'ble Supreme Court in *Arunkumar H. Shah Huf Vs. Avon Arcade Premises Co-operative Society Limited and Ors.* [2025 0 Supreme(SC) 669] regarding MOFA and how the question of title is dealt with in a civil suit and not before the competent authority under MOFA (para 20).
- ii) The Hon'ble High Court of Bombay in *Shreji Builders and Developers, through Pradeep Kantilal Shah Vs. Shreeji Apartment Co-op. Housing Society Limited and Ors.* in Writ Petition No. 9132/2023 regarding MOFA and that the question of title is dealt with in a civil suit and not before the competent authority under MOFA (para 10).
- iii) The Hon'ble Madras High Court in *R. Arumugam Vs. PR. Palanisamy and Another* [2013 0 Supreme(Mad) 186] wherein it was *inter alia* held that (para 10) suppression of fact, misrepresentation of facts, fraud, abuse of process of Court had not been made grounds for rejection of plaint and while deciding the application for rejection

of plaint, only the averments of the plaint can be considered. At that stage, the Court can not get into the truthfulness of the cause of action mentioned in the plaint. The question of *res judicata* cannot be decided at the stage of or in application pertaining to rejection of plaint (para 13/23).

10. Learned Advocate for the Defendants has sought to distinguish the said judgments on the facts of the present case. It is also submitted that, in the present case cause of action is not made out and the present case is an attempt to interfere with the jurisdiction of the conveyance proceeding.

11. The findings in the judgments of the Hon'ble High Courts and the Hon'ble Supreme Court are most reverentially noted. Perusal of judgments reflects that, each case has to be examined based on the facts brought forth, the plaint has to be examined, whether there is complete absence of cause of action has to be checked. *Res judicata* is a separate ground for which remedy lies under Section 11 of the CPC, *res subjudice* is a separate ground for which remedy lies under Section 10 of the CPC. However, they are not grounds for rejection of plaint. A suit pertaining to question of title lies before Civil Court and not authority under the MOFA. Suppression of fact, misrepresentation of facts, fraud, abuse of process of Court have not been made grounds for rejection of plaint and while deciding the application for rejection of plaint, only the averments of the plaint can be considered and not the defence put up.

12. In the present case, I have gone through the averments in the plaint. Para No. 9 mentions the cause of action arose in June 2025. The suit is filed in July 2025. The veracity of the said claims including the cause of action has to be proved by the Plaintiff. The

prayer for declaration is sought. The Plaintiff will be required to prove the facts averred and the Defendant will have an opportunity to test the veracity of the claims at the time of trial.

13. The plaint deals with the question of title which can be decided by a Civil Court and not by the competent authority before whom the conveyance proceeding is pending. Hence, the suit cannot be said that the suit is barred by law.

14. As regards limitation, it is a settled law that limitation can be considered as a mixed issue of fact and law unless the suit appears to be patently vexatious upon the meaningful reading of the plaint. Considering the prayers sought and the averments made in the plaint, it appears that, in the present facts, the settled principle that limitation is a mixed question of facts and law is applicable, which plea will have to be tested based on the evidence led.

15. The suppression of facts or other proceedings are not grounds for rejection of plaint. All these grounds may be considered at the time of trial or at the time of relevant application. However, at this stage, for the foregoing reasons, the plaint cannot be held to be liable to be rejected under Order 7 Rule 11 of the Code of Civil Procedure. In these circumstances, this Court passes the following order:-

ORDER

1. Application is rejected.
2. Costs on Applicants.
3. Application is accordingly disposed of.

Place: Palghar
Date: 15/11/2025

(Smt. P.S.G. Chalkar)
2nd Jt. Civil Judge Junior Division,
Palghar

CERTIFICATE

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 Stenographer	--	Prathamesh D. Patane
Court	--	2 nd Jt.CJJD & JMFC, Palghar
Date	--	15.11.2025
Order signed by the Presiding Officer on	--	15.11.2025
Order uploaded on	--	17.11.2025