

ORDER PASSED BELOW EXHIBIT-15.

1. This application is filed by defendant No.11 under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure.
2. This defendant contended that, plaintiff has filed this suit for declaration and perpetual injunction. Plaintiff had ample opportunity provided by the Maharashtra Land Revenue Code to file appeal upon the said order of Inferior Court to Superior Court and under this circumstances the suit for declaration is not maintainable, even the Revenue Authority specify the remedy available to him. Defendant No.1 had filed a suit for partition, separate possession and declaration before Civil Judge Junior Division, Malegaon bearing R.C.S. No.46/2020 and hence the present suit is not maintainable. Hence, prayed that the application be rejected.
3. Plaintiff resisted the said application and filed his reply. He contended that, defendant has wrongly alleged that R.C.S. No.46/2020 filed before Malegaon Civil Judge Junior Division is adjudicated. Moreover, present suit is for the relief of declaration and permanent injunction and is between plaintiff and State. R.C.S. No.46/2020 is not against State and the relief is for partition and separate possession. The relief in the present suit and in R.C.S. No.46/2020 are different, cause of action are different. Ingredients of Order 7 Rule 11 of the Code of Civil Procedure are not fulfilled and hence prayed that, the application be rejected.
4. Considering the rival contentions of both parties, following points arise for my determination and I record my findings thereon for the reasons mentioned below : -

Point for Determination**Findings**

- | | |
|--------------------------------------------------|--------------------------|
| 1) Whether application is liable to be allowed ? | No. |
| 2) What order ? | Application is rejected. |

REASONS**As to point No.1 & 2 :**

5. Learned advocate for plaintiff argued the application at length. Learned advocate for defendant No.11 failed to argue the matter in spite of giving enough opportunities. This is application filed by defendant No.11 for rejection of plaint filed under the provision of Order 7 Rule 11 read with 151 of the Code of Civil Procedure. As per the Order 7 Rule 11 of the Code of Civil Procedure plaint can be rejected on any one of the following grounds :

- 1) Where plaint does not disclose cause of action.
- 2) Where the relief claimed is under valued.
- 3) Deficiency in stamp.
- 4) Suit barred by any law.
- 5) When plaint is not filed in duplicate.
- 6) When the plaintiff fails to comply with the provision of Rule 9.

6. On going through the contentions of defendant No.11 in this application, it appears that defendant is praying for rejection of plaint on the ground of barred by law.

7. This is a suit for declaration that, plaintiff is the owner and is having title over the suit property and also for restraining the defendants from creating 3rd party interest in the present matter.

Defendant No.11 has contended that, R.C.S. No.46/2020 is filed by Kundlik and others before Civil Judge Junior Division, Malegaon for partition, separate possession and declaration, as the suit property is ancestral property. It is pertinent to note that, defendant No.11 has not filed copies of R.C.S. No.46/2020. Except bare word there is nothing to show how the present suit is barred due to the suit filed before Malegaon Court. If both the suits are on the same cause of action and the reliefs are same then the provision of Section 10 will come into picture and if R.C.S. No.46/2020 is decided on merits then Section 11 of the Code of Civil Procedure will come into picture. But, before me defendant No.11 has not produced any documents with regard to R.C.S. No.46/2020.

8. Defendant No.11 further contended that, remedy is available to plaintiff under the provision of Maharashtra Land Revenue Code. It is pertinent to note that, this suit is for declaration and perpetual injunction and hence the suit is maintainable under Section 9 of the Code of Civil Procedure. Defendant No.11 has miserably failed to make out any case for rejection of plaint as per the provision of Order 7 Rule 11 of the Code of Civil Procedure. Hence, in view of my above discussion I am of the opinion that, the application of defendant No.11 for rejection of plaint is liable to be dismissed. Thus, I answer point No.1 in the negative and in answer to point No.2, I pass the following order.

ORDER

01. Application Exh.15 is hereby rejected.

(Nayomi P. Pawar)

Date : 12/04/2023

Civil Judge (Sr. Division), Washim.

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.

Court Name	: Civil Judge (S.D.), Washim, Dist.Washim.
Date	: 12.04.2023.
Order signed by the presiding officer on	: 12.04.2023.
Order uploaded on	: 13.04.2023.
Order uploaded by	: S. P. Kale (Stenographer G-III)