

MHWS090010022018



ORDER BELOW EXHIBIT 34
(Passed on 07/12/2023)

1. This application is filed by defendant no.8/applicant under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (Herein after referred to as '*The C.P.C.*'). Say filed by the plaintiff/non-applicant. (Hereinafter the parties are referred to as **the Defendant and Plaintiff**). Heard both the sides. Hence, on the basis of material available on record, the application is taken for further order. Perused the record and documents.

2. In short, it is the contention of the defendant that the plaintiff filed a suit for partition and separate possession of her ancestral property. On 06/06/2012 the present defendant has bought the property situated at mouje-Fulumari, part-I, Gat no.69, area 6.82 H. R. from the defendant no.1 vide sale-deed. On 07/05/1994 vide mutation entry no.512 the plaintiff gave relinquishment letter. Accordingly, on 08/05/1994 the mutation entry have been updated by the concerned Talathi. Actually, the property Gat no.68 and 70, part-I mouje-Fulumari is in possession of the plaintiff. After supra mutation entries it was necessary for the plaintiff to file appeal before the Sub-Divisional Officer within 60 days.

3. It is the further contention of the defendant that, In the year 2018 the government published public notice regarding the acquisition of the said agricultural land. Therefore, the plaintiff filed the present suit with ill-intent to harass the defendants. However, the plaintiff has filed appeal to cancel the mutation entry in the year 2018 before the Sub-Divisional office, Karanja. The said appeal was dismissed. Thereafter, the plaintiff filed the

appeal against the said order before the Collector, Washim. The said appeal also dismissed. Plaintiff has no information about the possession in the aforesaid suit property. The contention of the plaintiff is false. Therefore, the defendant prayed for dismissal of a suit under Order 7 Rule 11 of the C.P.C.

4. The plaintiff opposed the application and submitted that, the defendant filed the present application on the basis of revenue case. Both the said matters are not relevant. It has the separate remedies. If the cases based on revenue entry, same has no effect on the civil suit. Both the reliefs and rights of the parties are different. The application is not filed within the boundaries of law. Therefore, the same is not legally tenable. Hence, He has prayed for rejection of the application with costs.

5. Read the plaint, application and say of the plaintiff. Perused the record. Order 7 Rule 11 of the C.P.C. provides for rejection of the plaint on the following grounds :-

- a) Where it does not disclose a cause of action.
- b) Where the relief claimed is under valued, 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 plaint is written upon the paper insufficiently stamped.
- d) Where the suit appears from the statement in the plaint to be barred by any law.

6. It appears from the plaint that the plaintiff filed a present suit praying for partition, separation possession and declaration of the suit properties as described in para no.2 of the plaint by the virtue of joint Hindu family property as same being ancestral one. It is specifically contented in para no.4 of the plaint that the defendant no.1 illegally shown the transfer of

the property in their names in the revenue record. It is further specifically contended in para no.6 that in the 7/12 extract of the Gat no.69 and mutation no.512 the defendant no.1 falsely submitted relinquishment-deed to the Talathi Office on 08/05/1994. Thereafter, further it is contended in para no.10 that the land Gat no.69 possessed by defendant no.1 and sold by registered sale-deed dated 06/06/2012 to the defendant no.8 having area 2 H. 40 R. land and the mutation 1054 taken in the name of the defendant no.8. the above all sale-deed is not binding to the plaintiff.

7. In the given facts of the case, it appears that the defendant did not state as to on what grounds as mentioned in Order 7 Rule 11 of the C.P.C. the suit deserves to be dismissed. However, for the want of just grounds as mentioned under Order 7 Rule 11 supra the application is not tenable in the eyes of law.

8. The defendant has further contended that the contention of the the plaintiff is false The averments made in the plaint did not provide that the suit of the plaintiff is barred as contended by the defendant. The plaintiff claims to be the member and sharer of the ancestral joint Hindu family property. Therefore, he has sought a relief as contended. It is a settled principle that, every person has a legal right to protect his property by appropriate proceeding. Therefore, at this stage it can not be said that only on the basis of objection as contended by defendant the present suit is liable to be dismissed. The contentions as raised by the defendant is not covered under Order 7 Rule 11 (a) to (d) of the C.P.C. Hence, considering the submissions, facts and circumstances of the case, I am not inclined to allow the present application. Therefore, application deserves to be rejected. Hence, I am inclined to pass the following order:

ORDER

1. Application Exh.34 is rejected.
 2. Costs in main cause.
- (Dictated and pronounced in open Court).

Date:- 07/12/2023

Sd/-
(**Ms. Trushna G. Bansod**)
Jt. Civil Judge, (Jr.Dn.),
Manora.

CERTIFICATE

I affirm that the contents of this PDF file Judgment/Order are same word to word as per the original Judgment/Order.

Name of the Stenographer	-	Smt. R. K. Chavhan(L.G.)
Court	-	Jt. CJJD & JMFC, Manora.
Date of Judgment/Order	-	07/12/2023
Judgment/Order signed by the Presiding Officer on	-	07/12/2023
Judgment/Order uploaded on	-	07/12/2023