

CNR- MHYA110002582023 	Reg.Civil Suit No. 11/2023 Ibrahimkhan & Oth Vs. Gafurmiyya & Oth
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ORDER BELOW EXH. 17

(Date :17/04/2026)

It is an application filed by defendants under order 7 rule 11 of Civil Procedure Code.

2. The contention of defendants that, plaintiff is seeking relief of measurement, recovery of possession and perpetual injunction in respect of suit property. They further contended that, as per contention of plaintiffs, plaintiff no. 1 is owner of 2H. 59R land out of which he has sold 1H. 24R land, in measurement plaintiff had found 50R land of suit property is less in his possession. They further contended that, plaintiff has not properly valued the suit property and suit is not within limitation. Plaintiff also not having any cause of action to file present suit. So they prayed to allow this application.

3. Plaintiff filed their say at **Exh. 27** and contended that, plaintiff filed present suit for measurement, recovery of possession and perpetual injunction. They further contended that, they have filed present suit within limitation and they also mention date of cause of action in para no. 8 of the plaint. They further contended that, they have given requisite court fees as per Maharashtra Court Fees Act. Hence, they prayed to reject the

application.

4. Read the plaint and application. I have also perused the documents. Heard both the Learned advocates. It is well settled that while deciding the claim of the plaintiff the recitals in the plaint are important. From recitals in the plaint it is clearly transpires that plaintiff has claimed suit for recovery of possession and perpetual injunction in respect of suit property.

5. On perusal of records it appears that, plaintiff has not mentioned specific date of cause of action. Cause of action is bundle of facts on perusal of pleading of plaintiff, it appears that, defendants have encroached 50R land of the suit property and plaintiff has demanded measurement of suit land to the defendants in the month of June-2022. But, defendants denied it. Therefore, cause of action arose to file present suit against defendants. Defendants also raised question of limitation. Whether plaintiff has filed present suit within limitation or not it is mixed question of law and facts, burden lies on plaintiff to prove it.

6. It is to be noted that, valuation of suit depends upon the relief claimed in it. In present suit plaintiffs have claimed relief of recovery of possession.

7. Section 6(v) of the Bombay Court Fees Act deals with the computation of court fees payable in case of Possession of land, house and garden. It is fact that, plaintiffs filed present suit for recovery of possession of land.

8. Now the focus of discuss on its legal aspects, section 6(v) of the Bombay Court Fees Act, 1959 as under :-

“ In suits for the possession of land, houses and gardens according to the value of the subject-matter; and such value shall be deemed to be, where the subject-matter is a house of garden according to the market value of the house or garden and where the subject-matter is land, and--

a) Where the land is held on settlement for a period not exceeding thirty years and pays the full assessment to Government a sum equal to [forty times] the survey assessment;

b) Where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government a sum equal to [eighty times] the survey assessment; and

c) Where the whole or any part of the annual survey assessment is remitted a sum computed under sub-paragraph (a) or sub-paragraph (b) as the case may be, in addition to [eighty times] the assessment or, the portion of assessment, so remitted;

9. The bare reading of provision make it clear that, suit is for recovery of possession court fees for suit for possession is according to value of the subject matter in case of landed property. Valuation of suit property is calculated as per full assessment to the government as per to provision. But, in present case plaintiff has valued 20 times of the survey assessment, it is not proper one. Opportunity to be provide to the plaintiffs to correct the valuation of recovery of encroached portion otherwise the remedy would be rejection of plaint. Therefore, I am inclined to grant 30 days time to plaintiffs to correct the valuation of suit property, otherwise the plaint will be rejected. Hence, I pass following order,

Order

1. The application is partly allowed.
2. Plaintiff is directed to valued the suit property on encroached portion.
3. Plaintiff is directed to correct the valuation of suit and deposit the requisite stamp paper within 30 days from date of order, if plaintiff failed to correct the valuation and paid to till the specified date requisite court fees the plaint will be rejected on the same day.
4. Cost in cause.

Date: 18/04/2026

(R.A.A.Khateeb)
Civil Judge Jr. Dn.,
Umarkhed

CERTIFICATE

I affirm that the contents of this [P.D.F.](#) File order/judgment are same, word to word, as per the original order.

Name of the Stenographer	A. A. Dake
Name of Court	Smt.R.A.A.Khateeb, Jt. C.J.J.D & J.M.F.C., Umarkhed
Date of Dictation	18.04.2026
Judgment signed by the P.O. on	18.04.2026
Judgment uploaded on	18.04.2026