

MHYA150001422022



ORDER BELOW EXH. 17 IN R. C. S. NO. 41/2024
(Passed on 20.09.2025)

This application is moved by defendant No. 1 to 3 under Order 7 Rule 11(b) and (d) of the Civil Procedure Code for rejection of the plaint.

2. Defendant No. 1 to 3 stated that, the suit filed by the plaintiff for possession of suit property. The case of the plaintiff file instant suit property was ancestral one and joint family property. His uncle died in the year 1973, Thereafter, till the year 1999 the suit property was in his possession. But, the defendant jointly and forcibly dispossessed his old aged aunt by making encroachment recorded the mutation in their names fraudulently. The plaintiff carried the measurement through cadastral surveyor on 17.07.2023, in which the fact is reveal that defendants made encroachment over suit property. Therefore, the plaintiff lodged complaints to respective authorities, but in vain. He also issued notice dated 23.09.2024 to defendants and they failed to comply the same. Hence, the cause of action arose to file suit on 04.09.2024, 17.07.2023, 18.09.2024, 30.07.2024 and 27.07.2021. The plaintiff failed to give proper description of property with its four boundaries. He failed to specify proper measurement of property and failed to furnish mandatory sketch map with plaint as per order and Rule 3 of Civil Procedure Code.

But, in the measurement of sheet No.8 Bhumapan No.1107 mauja Ner on dated 17.07.2023, the surveyor specially mentioned in their khulasa.

3. Further, Defendant No. 1 to 3 stated that, the contents in plaint specifically showed that the plaintiff was having knowledge that, defendants possessed the suit property from the year 1999. The plaintiff filed the instant suit for possession on 24.09.2024 i.e. laps of twenty five years. The Limitation Act, 1963 by virtue of Article 64 lays down a limitation period of 12 years for suit for possession of immovable property or any interest based on the title. Considering the pleading in the plaint the plaintiff should have to file the suit within twelve years when the cause of action arose firstly. In such situation suit is not filed within limitation. Hence, apparently barred by law of limitation. Particularly, plaint is not drafted by giving necessary contents as per the provision of Order 7 Rule 1 of the Civil Procedure Code.

4. Even through the issue of limitation is the mixed question of law and fact, this is the case where facts on basis of which, issue of limitation has to be decided on admitted and undisputed facts which clearly born out of record.

5. Further, defendant No. 1 to 3 stated that, Considering the above situation the cause of action for the instant suit is allegedly accrued is shown imaginary, made out, knowingly and intentionally, artificially stretched and is shown in the plaint within the time limit but it is not true and fact. The suit is not property valued as per Bombay Court Fee Act. The plaintiff has

not given the valuation of property not paid necessary court fee. Hence, suit is liable to be rejected.

6. The suit summons not served to defendant No.4. Hence, say of defendant No.4 could not be file on record.

7. The plaintiff filed say and opposed the application on the ground that, in every measurement the new things discover. The process of sending documents is going on. The defendants are rich and political persons. The learned counsel of the plaintiff submitted that, there is no substance in the application. Further stated that, the plaintiff paid proper court fees. Hence, prayed to reject the application.

8. Heard both the sides and perused the record. The counsel for the defendants vehemently argued that the plaintiff not paid proper court fees. Hence, the plaint is liable to be reject.

9. After hearing both the sides following points arose for my determination and I answer the same with reasons as under -

Sr. No.	<u>P O I N T S</u>	<u>F I N D I N G S</u>
1.	Whether case is made out to reject the plaint under Order 7 Rule 11 of C. P. C. ?	No.
2.	What Order ?	As per final Order.

REASONS

As to point No. 1 :-

10. I have read the provisions under order 7 Rule 11 of

the Code of Civil Procedure wherein it is provided the plaint shall be rejected in the following cases-

- (a) whether it does not disclose a cause of action;
- (b) where the relief claimed is under-valued, and plaintiff, on being required by the Court to so 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:

11. At the outset it is worthwhile to discuss here that, the settled principle of law that, "The application of rejection of the plaint shall be decided within the four corners of the plaint" it means that the court should only consider the statements and facts contained within the plaint itself when making a decision on it, particularly in the context of an application for rejection of the plaint under Order VII Rule 11 of the Civil Procedure Code.

12. The defendants filed this application of rejection of the plaint on following grounds (i) The plaintiffs not filed Court fees as per valuation of the property and (ii) The suit is not filed within limitation.

13. According to Order VII Rule 11 of the Civil Procedure Code, while failure to pay the required court fees and not filing plaint in duplicate can lead to rejection of the plaint, the court is obligated to first give the plaintiffs an opportunity to rectify the deficiency by paying the requisite fees and to give an opportunity for filing plaint in duplicate. The court can direct the plaintiffs to pay the deficit within a specified time and direct to file plaint in duplicate. If the plaintiffs fails to comply with the court's direction, then the plaint can be rejected.

14. if the plaintiff has not paid the appropriate court fee and not file plaint in duplicate then it is just and proper to direct him to pay the appropriate court fee and direct to file plaint in duplicate.

15. On perusal of record it appears that the plaintiff filed suit for declaration of ownership of house and recovery of possession of encroached area of open space in front of house and the plaintiff paid court fees as Rs.300/-.

16. The plaintiff pray for declaration of the ownership of the house and recovery of possession of encroached area of open space in front of the house.

Reasoning on the ground of court fees :

17. It is necessary to mention here that, the plaintiff is not asking only for declaration but also recovery of possession of encroached area of open space in front of the house. In the present matter declaration become ancillary relief. The main relief is recovery possession of encroached area of open space in front of the house. According to the proviso of section 6(iv)(d) when combination of relief as such sought the court fees is full ad-valorem fees. It is necessary to mention here that, it appears that, court fees will be based on the market value of the encroached portion in front of the house. Therefore, court fees is payable under proviso of section 6(iv)(d) of the Maharashtra Court Fees Act.

18. Hence, it is worthwhile to discuss the relevant provision of the Maharashtra Court Fees Act.

The section 6 (iv)(d) of the Maharashtra Court Fees Act “In suits for declaration in respect of ownership, or nature of tenancy, title, tenure, right, lease, freedom or exemption from, or non-liability to, attachment with or without sale or other attributes, of immovable property, such as a declaration that certain land is personal property of the Ruler of any former Indian State or public trust property or property of any class or community one fourth of ad valorem fee leviable for a suit for possession on the basis of title of the subject-matter, subject

to a minimum fee of one hundred rupees:

Provided that if the question is of attachment with or without sale the amount of fee shall be the ad valorem fee according to the value of the property sought to be protected from attachment with or without sale or the fee of sixty rupees, whichever is less:

Provided further that, where the defendant is or claims under or through a limited owner, the amount of fee shall be one-third of such ad valorem fee, subject to the minimum fee specified above:

Provided also that, in any of the cases falling under this clause except its first proviso, when in addition any consequential relief other than possession is sought the amount of fee shall be one-half of ad valorem fee and when the consequential reliefs also sought include a relief for possession the amount of fee shall be the full ad valorem fee”.

19. If the plaintiff filed suit only for possession then court fee will be applicable under section 6(iv)(v) of the Maharashtra Court Fees Act. Considering the pleading and relief it appears that, the plaintiff is liable to pay court fees on market value of the encroached portion in front of the house as per proviso of Section 6(iv)(d) of the Maharashtra Court Fees Act, 1959, for declaration of the ownership and recovery of possession of encroached

portion portion in front of the house.

20. The court has the power to reject a plaint under Order 7 Rule 11 (e) of the Civil Procedure Code, but considering the nature of the suit it is a just and proper to provide the plaintiffs an opportunity to rectify defects before resorting to rejection. It is necessary to give a fair chance to present a copy of plaint in duplicate, because defects are curable.

21. On perusal of record it appears that, the suit is at a initial stage, trial yet to commence. If the plaintiffs are ready to pay deficit court fees, the plaint cannot be rejected, deficiency in the court fees is curable defect, and natural justice demands that, the plaintiffs be given time to comply, failure to pay correct court fees does not automatically lead to rejection of the plaint. Hence, it is necessary to give opportunity to the plaintiffs to pay court fees as per above provision.

Reasoning on the ground of issue of limitation :

22. It is a settled law that, when the issue of limitation involves a mixed question of law and fact, the plaint cannot be rejected under Order VII Rule 11 of the Code of Civil Procedure at the initial stage. A full-fledged trial is necessary to determine the relevant facts and apply the law of limitation. It is a pleading of the plaintiffs that, the cause of action arose in the year 2023. Hence, the plaint cannot be rejected under Order 7 Rule 11(d) of the Code of Civil Procedure solely on the grounds of limitation. Because, the issue of limitation involves a mixed question of law

and fact, such issues require proper evidence and cannot be decided on the pleading of the plaintiffs.

23. Defendant No. 1 to 3 contended that, the suit is barred by law of limitation. In such circumstances it is just and proper to frame the issue on limitation along with other issues at the time of framing of the issues.

Reasoning on the ground of description of the suit property :

24. Defendant No. 1 to 3 stated that, the plaintiff not mentioned four boundary and description of the property. It is pertinent to note that, the plaintiff filed application below Exh.24 under order 6 Rule 17 of the Code of Civil Procedure. The said application is allowed. The plaintiff carry out amendment and mentioned the four boundaries. Hence, I do not found any substance in the above submission of the defendants.

25. In the light of aforesaid discussion and considering nature of the suit and above provisions, I do not found there are any grounds to reject the plaint. Hence, I answer point No. 1 in negative.

As to point No. 2 :-

26. If the plaintiff failed to file a plaint in duplicate and insufficient payment of court fees does not rendered the plaint void-ab-initio, these deficiency are curable defect. Similarly, issue of limitation is mixed question of law and fact in this matter. Hence, the plaint cannot be rejected at this initial stage on the

ground of limitation. The plaintiff pleaded that, cause of action arose in the year 2021. In the light of my findings to points No. 1 the plaint is not liable to be rejected. In answer to Point No.2, I pass the following order.

ORDER

1. The application Exh.17 is hereby rejected.
2. The plaintiff is direct to pay court fees on market value of encroached area of open space in front of house as per proviso of section 6(iv)(d) of the Maharashtra Court Fees Act, 1959 within fourteen days from today.
3. The plaintiff is direct to file a plaint in duplicate within fourteen days from today.

(Order pronounced in the open Court.)

Ner,
Date : 20.09.2025.

(G. C. Fulzalke)
Civil Judge Junior Division,
Ner, Dist. Yavatmal.

CERTIFICATE

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

Name of Stenographer	:-	Ku. B. N. Nare (Grade-III)
Court	:-	Civil Judge Jr. Dn., Ner.
Date	:-	20/09/2025
Order signed by	:-	23/09/2025
the Presiding Officer on		
Order uploaded on	:-	23/09/2025