

**Mr. Shivaji Popat Tapkir and Ors.
Vs.
Kakade Associates Unit V
Through Its Partner Mr. Mukesh Kumar Shah and Ors.**

ORDER BELOW EXH - 50.

Invoking the provisions of Order 4 of the CPC, defendant no.3 is seeking for direction to the plaintiffs to cure the defects and has further prayed for rejection of plaint, if the defects are not cure. Application is replied by plaintiffs vide Exh.51 with the contention that plaint is properly filed.

2. As per defendant no.3 the defects include (i) all sub paragraphs are not numbered; (ii) the description of entire property is given in para no.1 and Schedule-A of the application, however, suit portion i.e. concerned tower is not described; (iii) the paragraphs of the pleading are not verified as per Order 6 Rule 15 of the CPC and; (iv) suit was filed in representative nature, but the compliance of Order 7 Rule 4 read with Order 1 Rule 8 was not made. Application is opposed by plaintiffs vide Exh.51 stating that, suit is properly filed and registered, on the other hand the points of objection are not mentioned there in the pleading of defendant no.3. The Ld. Counsel for plaintiff has relied upon the ruling of Ram Sarup Gupta Vs. Bishun Narain Inter College and Ors. reported in AIR 1987 (SC) 1242. Whereas Ld. Counsel for defendant no.3 has relied upon the ruling of Nanasaheb Vasantrao Jadhav Vs. State of Maharashtra and Ors. delivered in PIL No.146 of 2018 order dated 26.02.2022.

3. The perusal to the plaint reveals that, the plaintiff has not given numbers to the sub paragraphs. There are more than five

unnumbered paragraphs. It will become difficult to refer the particular paragraph in the order and Judgment, unless it is numbered properly. As such it is necessary to direct the plaintiffs to give numbers to the sub paragraphs as well.

4. So far as ground of verification of pleading is concerned, as per plaintiffs the entire contents of plaint are the information of personal knowledge of plaintiffs and therefore, it was not required to mention that the information contend in some definite paragraphs are received from others. Since plaintiffs are coming with a case that entire facts containing the application were reproduced out of their personal knowledge, there is no case to direct the plaintiffs to reverify the plaint and mention the particulars as to the information of which paragraphs received from others. Moreover, during evidence also by inviting attention of the plaintiff/s or their witness it could be gathered whether the facts pleaded in the plaint were not the outcome of personal information of the plaintiffs.

5. So far as ground of description of property is concerned, instant suit is not for removal of encroachment. Apart, plaintiffs have come with a case that entire property mentioned in Schedule-A is the suit property. Therefore, the question whether the description of suit property is correct or not, is required to be kept open for adjudication. In case the description is found incomplete or incorrect, the necessary reparation thereof will have to be suffered by the plaintiffs. The said aspect can also be considered while deciding the application for rejection of plaint, temporary injunction and suit which are pending for adjudication.

6. The ground of “representative nature of suit” was raised citing the pleading of plaintiffs wherein the reference of other members of societies are found at 22 places in the plaint. However, the plaintiff no

where stated that, they are suing in representative character. The question whether the relief sought by plaintiffs could bind them and defendants only or to other members of society also, is a question of trial. From the bare reading of plaint, the plaintiffs are appearing to have sued defendants by projecting them as some members of the society. The question whether the suit is bad for non-joinder of other members as party and that whether the suit is bad for non-compliance of Order 7 Rule 4 read with Order 1 Rule 8 of the CPC, are to be kept open for adjudication. The said question can also be considered while deciding application for rejection of plaint and temporary injunction which are pending for hearing in the present suit.

7. So far as case of Ram Sarup (Cited Supra) is concerned, it is applicable to the pleading. The scrutiny of plaint is to be carried out independently even prior to the stage of written statement. Since the ground in the present application is pertaining to Order 4 of the CPC, the plaintiff cannot take the benefit of the said ruling, which is pertaining to Order 6 of the CPC wherein absence of material facts in the written statement could be seen during trial on merit. The case of Nanasaheb (Cited Supra) lays down that if plaint lack essential requirements of valid plaint, the Court may order for the removal of objection and if it was not done it may lead to consequences. As discussed above, there is no case to reject the plaint, as the defect in not giving numbers to the sub paragraphs are curable and other points are kept open for adjudication. I therefore, pass the following order -

ORDER

1. Application is partly allowed.
2. Plaintiffs to give numbers to the unnumbered paragraphs/sub paragraphs of the plaint.
3. The question of insufficient or incorrect description of suit

property, non-compliance of requirements of suit of representative nature under Order 7 Rule 4 read with Order 1 Rule 8 of the CPC and its effects, are kept open for adjudication.

4. Costs in main cause.

Date -25.11.2025.

(**K. R. Singhel**)
4th Jt. Civil Judge Sr. Div., Pune.