

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9486 OF 2018

**YUVRAJ RAMDAS MORE AND OTHERS
VERSUS
PANDHARI TRAMBAK MORE THROUGH LRS SHASHIKANT
PANDHARIMORE AND OTHERS**

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Advocate for the Petitioners : Shri A. J. Patil

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 23rd OCTOBER, 2018.

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PER COURT :

1. The petitioners/original defendants are aggrieved by the order dated 13/06/2018, by which, the Trial Court has rejected, application Exhibit 102 filed by defendant Nos. 1, 2 and 20. These defendants have prayed for rejection of the plaint under Order VII Rule 11 (a) of the Code of Civil Procedure.

2. The contention of the petitioners is that there was a partition that took place between the blood relatives on 10/04/1946. The mutation entries are thereafter carried out on the basis of the said partition. An illusory cause of

action is posed by the plaintiff in the suit which cannot be substantiated. It is stated that the cause of action has arisen in 2011.

3. The learned Advocate for the petitioners/defendants strenuously criticized the impugned order. He submits that the plaint can be rejected if there is no cause of action or if it is barred by limitation. The documents placed on record are pointed out to support the contention that when partition took place on 10/04/1946, the plaintiffs have sold out their share of the land and now they intend to grab the property of the defendants.

4. It requires no debate that an order rejecting the plaint under Order VII Rule 11 of the CPC is an exceptional order and which cannot be passed casually. The Court, dealing with an application under Order VII Rule 11 of the CPC, has to be carefully consider, whether, the suit could be dismissed on the grounds raised by the petitioners contending that there is no cause of action or that the suit is barred by the law of limitation.

5. The Trial Court, while passing the impugned order has noticed that there are about 7 properties involved in the suit. Out of these, two properties in gut No. 62(2) and 19/3 are purchased in the name of Janabai. These two properties are not subject matter of the mutation entries pertaining to the partition of 10/04/1946.

6. As such, while passing an order under Order VII Rule 11 of the CPC, the Trial Court will have to apply its mind to the pleadings of the parties and if it finds that it would be unsafe to reject the plaint, it may at best, frame the issue in view of the objections and that issue can be tried alongwith all issues, together.

7. I, therefore, do not find that the impugned order could be termed as being perverse or erroneous. This petition, being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-