

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

912 WRIT PETITION NO.11217 OF 2022

**SHIVAJI JAGDISH KHARE
VERSUS
REKHA LAXMANRAO JOSHI AND OTHERS**

...
Advocate for Petitioner : Mrs. M.A. Kulkarni

...

CORAM : SANDEEP V. MARNE, J.

DATE : 15-11-2022

PER COURT :

. The petitioner has challenged the order dated 03.09.2022 passed by the Civil Judge Senior Division, Parbhani below Exh.32 in Special Civil Suit No.56 of 2019 rejecting the petitioner's application for rejection of plaint under the provisions of the Order-VII, Rule-11 (a)(c) & (d) of the Code of Civil Procedure, 1908.

2. So far as the objection with regard to lack of cause of action, I have gone through the plaint and I am satisfied that cause of action is disclosed for filing of the suit. So far as the objection as to bar of the suit under the Limitation Act is concerned, Mrs. Kulkarni, the learned counsel for the petitioner would submit that the suit challenging the Will executed on 22.08.2003 is barred by limitation. After having gone through the contents of the plaint, it is seen that

there is an averment that the plaintiff noticed execution of the Will during pendency of the revenue proceedings. Thus, the issue of acquisition of knowledge about execution of the Will is a question of fact, which needs to be established by leading evidence.

3. So far as the objection that the suit is bad for non-joinder of necessary party, I am of the view that the trial Court could not have otherwise rejected the plaint only by reading the same and forming an opinion that a particular party is necessary without whose presence the suit cannot be proceeded.

4. I do not find any error being committed by the trial Court while rejecting the application filed by the petitioner. The petition being devoid of merits is liable to be dismissed and is accordingly dismissed without any orders as to costs.

5. Needless to state that the trial Court shall not be influenced by the observations made in the present order while deciding the suit.

(SANDEEP V. MARNE, J.)