

:: ORDER BELOW EXH. 65 ::
(Passed on 27/02/2025)

Defendant No. 2, 11 and 12 have filed the present application under Order 7 Rule 11 (a) (b) and (d) r/w Section 8 of Maharashtra Court Fees Act.

2] Plaintiff objected the application by filing by vide Exh. 69.

3] Heard Ld. Advocates.

4] I consider the following points for my determination and record my findings thereon with reasons mention as under : -

Sr.No	Points	Finding
1	Whether defendant has made out that plaint is deserves to be rejected under order 7 Rule 11 of the Code of Civil Procedure ?	No
2	What order	As per final order.

REASONS**As to Point No. 1 -:**

5] Ld. Adv. Shri. Karnavat for defendant has submitted that plaintiff is challenging the sale deed dated 18/01/1995 and the subsequent sale deeds. The prima facie suit is beyond the

period of limitation. The cause of action stated by the plaintiff is illusory cause of action. He has further submitted that plaintiff has stated the cause of action in para No. 11 that in May 2018 some stranger measured the suit property and evicted the plaintiff, thereafter, plaintiff got the knowledge of documents executed in favour of defendants. He has further submitted that the suit is also not filed within the three years from May 2018. Therefore also, the suit is not within limitation.

6] He has further submitted that at the time of filing of the suit plaintiff was not in possession. She filed the suit for partition, separate possession and for declaration that the sale deeds are not binding on her share. Admittedly she is not in possession, therefore, she has to valued the suit as per Section 6 (iv) (ha) plaintiff has not valued the suit on the advolerialm valuation. The plaintiff has valued the suit as per Section 6 (iv) (j) which is not acceptable. The value of the suit property in the year more than Rs. 6 Crore. Plaintiff has $\frac{1}{4}$ share, therefore, she has to valued the suit accordingly. Therefore, there is inquiry of valuation needs to be made as per Section 8 of the Maharashtra Court Fees Act. He has further submitted that plaintiff has no right and share in the suit property. The suit is bad for non joinder of necessary parties. He has further submitted that the plaint is vexatious hence, it be rejected.

7] In support of his submission he has relied on the following judgments :

- 1] K. C. Leelavathi Vs. Smt. Ramanjanamma, RFA No. 418/2017.
- 2] Prafulla M. Bhat Vs. Saraswati Shastri, RFA No. 100103/2014,
- 3] Prasad Nandkumar Deshumukh Vs. Dhaku Navlu Aukirkar and Ors., Civil Revision Application No. 367/2024
- 4] C. S. Ramaswamy Vs. V. K. Senthil and Ors., 2022 O AIR (SC) 4724
- 5] Rajendra Bajoria and Ors. Vs. Hemant Kumar Jalan and Ors., MANU/SC/0678/2021

8] Ld. Adv. Shri. Shedge for plaintiff has submitted that the cause of action was arise in May 2018. Thereafter, there was a Covid -19 period. In view of the directions of Hon'ble Supreme Court the said period was exempted. The suit is filed on 01/01/2022. The Hon'ble Supreme Court has given the period of exemption till 28/02/2022. Plaintiff filed the suit on 01/01/2022. On 31/12/2021 there was winter vacation. Thus, he has further submitted that the suit is prima facie within limitation. In support of his submission he has relied on the judgments and order of Hon'ble Supreme Court in the matter of M. A. No. 21/2022 in M. A. No. 665/2021 in sue moto Writ Petition No. (c) No. 3/2020.

9] He has further submitted that at the stage of Order 7 Rule 11 the Court has to presume that the facts stated in the plaint are true for the purpose of deciding the application under Order 7 Rule 11. He has further submitted that the suit property is the

agricultural land, therefore, it has been valued on the land revenue. Plaintiff is seeking the declaration in respect of the sale deed. She was not party to the sale deed, therefore, it is not required to valued the suit as per Section 6 (iv) (ha). In support of his submission he has relied on the law laid down by the Hon'ble Bombay High Court in the matter of Writ Petition 7879/2015. He has further submitted that there is no merit in the application hence, it be rejected.

10] Defendants contended that plaintiff is alleged daughter claiming the share in the coparcener property. The partition of the property was already held prior to 2004. Therefore, defendants contention that plaintiff has no right and interest in the suit property, therefore, the plaint shall be rejected. In support of his submission he has relied on the law laid down by **Hon'ble Karnataka High Court in RFA No. 100103/2014 between Prafulla M. Bhat and Ors. Vs. Saraswati Shastri and Ors. and K. C. Leelavathi Vs. Smt. Ramanjanamma and Ors. RFA No. 418/2017.** The Hon'ble Karnataka High Court has laid down that the daughters alive when the partition took place prior to 2004 between father and son. She can not claim the birth right in the property allotted to the share of father. It further laid down that the right to claim partition in respect of the properties which are the subject matter of saved partition under Section (5) of Section 6 of the Act, 1956 is not available to the daughter. The said judgments was outcome of the Regular First Appeal, wherein, the issue of whether partition was made between the parties prior to

2004 was the question fact. Without appreciating the evidence on record the findings can not be given as to the rights of daughters. As per the settled position of law the court has to treat the contents of plaint as true while deciding the application under Order 7 Rule 11. In such circumstances, the above referred judgments are not applicable to present facts.

11] The defendants have also relied on the law laid down in the matter of **Prasad Nandkumar Deshmukh Vs. Dhaku Navlu Aukirkar and Ors., Civil Revision Application No. 367/2023**. The Hon'ble Bombay High Court has laid down that the challenged to the registered document after a long delay or a seek declaratory relief in terms of a document executed several the dates ago can not be permitted. The present ratio of the Hon'ble High Court is outcome of the Civil Revision preferred against the rejection of the application under Order 7 Rule 11 in the suit of Specific performance of contract executed in the year 1989. In present matter the suit is filed for the partition, therefore, the parameters of the suit for partitions and the suit for specific performance of contract. Thus, the said ratio is not applicable to the present matter to reject the plaint.

12] The defendant has relied on the law laid down in the matter of **C. S. Ramaswamy Vs. V. K. Senthil and Ors. 2022 0 AIR (SC) 4724 and Rajendra Bajoria and Ors. Vs. Hemant Kumar Jalan and Ors. MANU/SC/0678/2021**. The Hon'ble Supreme Court has laid down that the plaintiffs can not be permitted to bring the suit

within the period of limitation by cleaver drafting, which otherwise barred by limitation. In present matter the plaintiff has come with the specific case in 2018 some strangers were disturb their possession and thereby he came across the fact of alienation of suit property. She is daughter of the coparcener. As soon as she got the information about alienation she had taken the 7/12 extract and revenue entries through her advocate and issued the notice on 26/08/2019 to defendant No. 1 to 4, 9 to 12 and thereby cause of action starts. Thereafter, the Covid-19 period has not started. The Hon'ble Supreme court has exempted the period from limitation since 15/03/2020 till 28/02/2022. Plaintiff filed the suit on 01/01/2022 prior to expiry of the exemption granted by the Hon'ble Supreme Court. Therefore, it can not be said that the suit is filed beyond period of limitation. There is no such cleaver drafting pleaded by the plaintiff. Plaintiff being the daughter was not aware of the alienation and it is quite natural that the daughters are used to reside at marital home, therefore, they don't have the knowledge of alienation made in their maternal family. Thus, the above referred case laws are outcome of the different fact and circumstances, hence, they are not applicable to present matter.

13] The defendants contending that the suit is not properly valued and proper court fees is not paid. According to defendant, it is mandatory for valued the suit as per the Section 6 (iv)(ha) of the Act. Ld. Adv. Shri. Shedge for plaintiff has countered the submission of Ld. Adv. Shri. Karnavat by relying on

the Judgment of Hon'ble Bombay High Court in Writ Petition No. 7879/2015. The Hon'ble Bombay High Court has laid down that when the suit is for partition and separate possession and when the valuation of the suit property is already made under Section 6 (vii) of the Maharashtra Court Fees Act, it is not necessary to pay the court fee on the market value of the sale deeds. In present matter the suit is valued on 200 times of the revenue assessment. The suit property is the land. Therefore, the valuation is proper and there is no necessity to made an inquiry about the valuation and court fees.

14] Considering all the above discussion, I conclude that in the suit for partition the limitation is mixed question of law and fact. It can not be determine at this stage. In such circumstances the suit is not barred by the any statutory provision. Defendants have not made out that the plaint is deserves to be rejected due to want of cause of action or limitation or barred by any other law. They have also not made out that the plaint is under valued and insufficiently stamped. Considering all these reasons, I answer point No. 1 in the negative.

As to Point No. 2 :-

15] Considering the findings of point No. 1, I pass the following order :-

:: ORDER ::

Application is rejected.

Pune
Dt. 27.02.2025

(Dr. D. U. Dongare)
3rd Jt. Civil Judge S. D., Pune

“I affirm that the contents of this P.D.F. file Judgment/ order is same word for word as per original Judgment/ order.”

Judgment/ order uploaded on :- 28/02/2025