MHSN080011992025

Order below e application Exh. 13 in RCS 174/2025
Ruksana Vs Prakash & Ors

The application is under Order 7 Rule 11 of the Code of Civil Proceedure, 1908 (the CPC) on behalf of defendant 4.

2 Perused the application, e-say, and the record.

3 Heard.

4 Brief facts of the plaintiff's case: The suit is for a declaratory decree that the sale-deed by defendants 1 to 7 are without consideration, possession, and not binding on the plaintiff's share, a decree of perpetual injunction from making any construction in the suit property and a decree of mandatary injunction for removing the construction.

5 It is averred and argued that the plaintiff's husband was in service of MSRTC. The plaintiff's husband purchased the suit property vide registered sale-deed 820/2002 dated 15/04/2002. The property was non agricultural open plot. The plaintiff obtained necessary permission and thereby constructed a three rooms of tin. The plaintiff started residing in the house with his family. The rest of the land was open. The plaintiff's neighbour was one Vijay Borade. Vijay Borade's sister and the plaintiff became friend. The plaintiff was in financial need. Vijay Borade assured to disburse private hand loan of Rs.5,00,000/- at the rate of 3 % per annum interest and to mortgage the house. Vijay Borade accordingly disbursed the amount to the plaintiff. A deed was executed wherein half of the portion was recorded nominally on the name of defendant 1 and the half portion on the name of defendant 2. The plaintiff was mislead that the deed is a mortgage one but in fact it was a sale-deed. The plaintiff has offered the suit property as a security for the loan. There was no tranfer of ownership of possession. The plaintiff's husband suffered eye disease. The plaintiff was required to take care of his hospitalisation. Defendants 1 and 2 with the connivance of defendant 3 has got executed the sale-deed. Defendant 4 is about to construct in the suit property. Hence, the present suit.

6 The application is premised on the ground that the plaintiff has sold vide sale-deeds dated 17/06/2013, 21/01/2014, 10/12/2015, 29/06/2020, 23/11/2021 the area mentioned therein to defendants 1, 2, and 4. However, failed to make a reference of the date, consideration in the sale deed dated 17/06/2013 in the pleadings. Further, there is no reference said consideration in para 7 of the pleadings in respect of the

sale-deeds of 2015 and 2021. The plaintiff has no valued the suit properly and sought a relief of declaration that the transactions are not binding on her. In March 2025, the defendants obtained the requisite permission to construct and incurred Rs.40,00 000/- for constructing a house, which is about to be completed. As per the Govt., valuation of the plot is Rs.14,61,075/- and as per the market value it is Rs.35,01,750/- therefore, for the aggregate of Rs.68,01,400/-. This Court lacks peculiar jurisdiction. Further, the suit from 17/06/2013 and 21/01/2014 provides a limitation of 3 years. The relief claimed is barred by limitation. Hence, the present application.

7 The application is opposed on the ground, that the application is misconceived. The transaction was of security. The plaintiff has mentioned the factual position. The deeds are not binding on the plaintiff. No directions can be issued as sought for. The valuation has to be made by the plaintiff and not defendant 4. It is prerogative of the plaintiff to seek the relief. The suit is within limitation. Hence, the application is opposed.

8 Ld.advocate for the plaintiff relied upon in Sri Biswanath Banik Vs Sulanga Bose 2022 LiveLaw (SC)280 and Dahiben Vs Arvindbhai 2012 AIR (SC) 3310.

9 The following points arose for my determination to which I record my findings together with the reasons thereof:-

Sr. No.	Points	Findings
1	Whether the plaint is properly valued?	No. the plaintiff to comply in respect of the sale-deed of 2002.
2	Whether the plaint is barred by limitation?	No
3	Whether the plaint has to be rejected on the ground of deficit court fees?	Yes, only in case the plaintiff fails to make necessary correction in the valuation and/or pay the deficit Court fees within 15 days from today.
4	What order?	As per the final order.

REASONS

Points 1 to 3:-

10 It is settled law, that while considering an application under Order 7 Rule 11 of the CPC, the averments in the plaint are germane and defence taken in the written statement is wholly irrelevant.

11 As a matter of fact and record, the plaint is sought to be rejected on twin grounds namely valuation, and limitation.

12 Section 6(iv)(ha) of the Maharashtra Court Fees Act, 1959 (the Act) deals with avoidence of sale etc., and its valuation to 1/2 of the ad valorem fee leviable on the value of the property. Section 6(iv)(j) of the Act provides for other declarations which provides for treating the valuation as the subject matter to be Rs.1000/-.

13 This Court is guided by law laid down in **Ajinkya Nitin Kabra Vs Manisha Babulal Mantri & ors unreported judgment Hon'ble Bombay High Court 21 August 2025** wherein it has been held that Section 6(iv)(ha) of the Act would be applicable only to the plaintiff who is a party to the sale-deed and seeking declaration of avoidance of sale-deed and Section 6(iv)(j) of the Act would be applicable in other case. Prima facie, from the pleadings the plaintiff was/is party to the sale-deed bearing registration No.720/2002. Therefore, for the law laid down in Ajinkya (supra) the plaintiff being a party to the deed and therefore, the facts are covered under Section 6(iv)(ha) of the Act.

14 To the sale-deeds of 2015 admittedly the plaintiff is not a party and therefore, the facts would be governed by Section 6(iv)(j) of the Act.

15 So far as the arguments that there is no mentioned of the consideration in the pleadings may not be considered for the reason that how to draft is a matter for the plaintiff. The documents are on the record.

16 The valuation is a subject matter between the plaintiff and the Court. The plaint can be rejected when despite being ordered to pay the deficite court fees the plaintiff fails to comply.

17 The question of limitation may be covered under Order 7 Rule 11 (d) of the CPC, if is a pure question of law. On prima facie perusal of the pleadings, there is a theory of cause of action dated 15/01/2025. Whether the cause of action is real or otherwise is a disputed question of fact and

law which requires evidence. Even otherwise, no averment in the plaint has been suggested to show that the suit is barred.

18 The law laid down in Biswantah (supra) is not applicable to the present fact is as much as it is in the context of Section 53 (A) of the TP Act. The law in Dahiben (supra) is in the context of the question of cancelation of the sale-deed for non payment of the consideration was involved. In the present facts, the non payment of the consideration is scuffled with the theory of private hand loan and execution of the document for security purpose. Costs follows the event. For the above reasons, the points for determination are answered. Hence, the following

Order

The plaintiff to properly value the suit for the purposes of declaration in respect of sale-deed bearing registration No.820/2002 dated 15/04/2002 to which the plaintiff is a party under Section 6(iv)(ha) of the Act and the other sale-deeds to which the plaintiff is not a party is governed by Section 6(iv)(j) of the Act. The plaintiff to comply within 15 days from this Court failing which the plaint shall be rejected.

2 Costs in the cause.

SANJAY PANDHARINATH BUNDE

Digitally signed by SANJAY PANDHARINATH BUNDE
Date: 2026.07.03 12:48:03 +0530

Jath (Sanjay P. Bunde)
Date: 03/07/2026 Jt.CJJD, Jath