

Order below Exh. 25 in R.C.S. No.1139/2020
(Sangita Sunil Kurhe & Ors. Vs. Lilabai Bhausaheb
Kurhe & Ors.)

MHAH140015222020



This is an application on behalf of Defendant no.9 vide Order 7 Rule 11(d) of Civil Procedure Code for rejection of plaint as it is time barred.

2. It is contended that, the plaintiff filed this suit for partition, declaration and injunction. This defendant no.9 in 2008 purchased suit property from defendant no.1 and thereby name of defendant no. 9 was mutated to the suit property vide entry no. 22255. In present suit the plaintiff prayed for declaration that mutation entry no. 22255 and 26048 is illegal, void and not binding on the share of the plaintiff. In 2008 the plaintiff was well aware about sale deed of defendant no.9. Also, in plaint the plaintiff mentioned that cause of action arises when mutation entry no. 22255 was mutated. Therefore, it is necessary for her to file suit within 3 years from the date of mutation entry no.22255 but it was filed beyond limitation. Due to which this suit is clearly time barred. Hence, suit may be rejected vide Order 7 Rule 11(d) of Civil Procedure Code.

3. The plaintiff filed her say overleaf the application and stated that this application is false and not tenable as per law. Hence, application may be rejected.

4. Heard Ld. Advocate Shri. N. S. Joshi on behalf of the plaintiff. In spite of sufficient opportunity defendant no.9 failed to advance his argument. Hence, application proceeded without argument on behalf of defendant no.9.

5. Following points arise for my determination and I have given findings thereon for the reasons stated below.

Sr. No.	Points	Findings
1	Whether the plaint is liable to be rejected as prayed ?	No.
2	What Order	As per final Order

REASONS

As to Point No.1 -

6. This application is moved under Order 7 Rule 11 (d) of Civil Procedure Code. It is settled law that while considering rejection of the plaint thereunder only the averments made in the plaint and nothing else is to be considered to find out whether the suit is barred by law. The present suit is for partition, declaration and injunction. The plaintiff has specifically contended that, the suit property is the ancestral property and she is having share in it. There is no partition by metes and bounds in the suit property. Further, she challenged the legality of the mutation entry vide sale deed executed by defendant no. 1 in favour of defendant no. 9. Therefore, plaintiff prayed the declaration that the said mutation entry is to be declared illegal, null and void and not binding on her share. In cause of action the plaintiff averred that on 10/07/2019 she asked for partition of her share to defendants then they stated that they have already sale out suit property. Thereafter she verified revenue record then she came to know about sale deed and mutation entry. Therefore, suit is well within limitation from the date of her knowledge. On the other hand, as per defendant no.9 the plaintiff had knowledge of sale deed at the earliest point of time and therefore present suit is time barred. Whether the plaintiff had prior knowledge of the transaction at an earlier point of time, or not, whether the averments in the plaint regarding the date of knowledge is credible, are matters that necessarily require appreciation of

evidence. At this preliminary stage, the averments made in the plaint must be taken at their face value and assumed to be true. In plaint the plaintiff specifically pleaded the date of knowledge and forms the basis of the cause of action. In such circumstances the question of limitation becomes a mixed question of law and fact, which cannot be adjudicated at this stage in summarily. In view of present facts the issue regarding limitation is a triable issue and for this reason the plaint cannot be rejected at the threshold in exercise of the power under Order 7 Rule 11(d) of Civil Procedure Code.

7. Apart from that, the present suit is not for a mere declaration of mutation entry being null and void but for partition and possession as well. The plaintiff claimed title over the suit property by succession and sought possession based on title. As per Article 65 (a) of the Limitation Act, where a suit is for possession of immovable property or any interest therein, based on title, the limitation period is 12 years when the possession of the defendants becomes adverse to the plaintiff. Thus, in view of above discussion I am of the opinion that, there is no ground to reject the plaint under Order 7 Rule 11(d) of the Civil Procedure Code. Therefore, I answer point no.1 in negative.

As to Point No. 2 -

8. As discussed above there is no ground to reject the plaint under Order 7 Rule 11(d) of the Civil Procedure Code. Hence, in answer to point no.2 I pass following order.

ORDER

The application at Exh. 25 is hereby rejected with costs.

Date – 01/12/2025

(Sandhya Y. Sul)
2nd Jt. Civil Judge, Junior Division,
Newasa, Dist. Ahmednagar.