


<u>MHAU07001572025</u> 	<u>R. C. S. No.297/2025</u> <u>Rambhabai Bhausahab Sukase</u> <u>Vs.</u> <u>Prakash Bhanudas Nikam &amp;</u> <u>Ors.</u>
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**ORDER BELOW EXH. 14**

The present application is filed by defendants as per under order VII rule 11 of Civil Procedure Code for rejecting the plaint.

**Defendants contention -**

2. It is the contention of defendants that, present suit is instituted by plaintiff for seeking relief of partition and declaration. In present suit plaintiffs are challenging sale deeds which are very old. One is 30 years old, second is 20 years old, two sale deed are 25 years old, 8 years old and 13 years old. As per his contention sale deeds which plaintiffs want to challenged are old in nature i.e. near about 30 to 13 years old. As per law of limitation, prescribed period for challenging sale deed is three years. Properties are transferred before the year 2005. the cause of action mentioned in plaint is illusory. Plaintiff is having every knowledge about all above sale deeds. Hence suit is not within limitation. On these grounds defendants urged to reject the plaint as it is not within limitation.

3. **Plaintiffs say -**

The above application is opposed by plaintiff by filing say at Exh 17. It is the contention of plaintiff that, all above sale deed are executed by some of the defendants without the knowledge or consent of the plaintiff. Plaintiff became aware about those sale

deeds only when cause of action arose. As per Article 58 of the Limitation Act, 1963, the limitation for filing a suit for declaration is three years from the date when the right to sue first accrues. In the present suit plaintiffs right to sue accrues when she know about the alleged transactions. It is the further contention of plaintiff that, as per Article 110 of Limitation Act, 1963, when a person is excluded from joint family property and seeks to enforce a right to share therein, the limitation period is twelve years from the date when the exclusion becomes known to the plaintiff. Moreover question of limitation is a mixed question of law and fact which needed evidence of both the parties. Such issue can not be determined merely on the basis of averments made in application. The present application is filed only to prolong the suit. On the above mentioned grounds plaintiff urged to reject the application.

4. Heard Ld Adv of defendants Shri K.S.Thombare. In support to his contention he has adduced on record case law of Hon'ble Bombay High Court. i.e. Tarvindrasing Mahendrasing Dhillan v/s Ambadas Asaram Mhaske and others, Civil Revision Application no. 169 of 2023. I have considered the ratio of it in next reasoning next paragraphs.

5. On perusal of order VII Rule 11 of Civil Procedure Code, it appears that reasons of rejection of plaint are mentioned there. From the contentions in application, it seems that defendant urged to reject the plaint on the ground of, suit is not within limitation. I have perused the case law adduced on record by defendant.

6. In the case law of Tarvindrasing Dhillan (cited Supra) what the Hon'ble Bombay High Court held that,

*“ it appears that the plaintiffs have created an illusory cause of action with intent to bring the present civil suit within limitation. Moreover their own documents on record are showing that their suit is not within limitation. The present litigation being vexatious and based on illusory cause of action and also barred by limitation, is nothing but an abuse of process of court and law.”* The Hon’ble court came to the above conclusion after it is found to them that plaintiffs was having knowledge about transfer of ancestral property by some of the defendants in the year 2017, after obtaining certified copies of 7/12 extract, but cause of action shown by the plaintiff is 22/12/2022. Hence Hon’ble High court held that cause of action mentioned in plaint is illusory and set aside the order of Trial Court which rejected application under order 7 Rule 11 of Civil Procedure Code.

7. In present case plaintiff in her plaint specifically states when cause of action arose to the suit. Prima facie it can not be said that the said cause of action is illusory. For deciding it, it needs evidences of both the parties. As per Article 58 of Indian Limitation Act, 1963, the limitation for filing a suit for declaration is three years from the date when the right to sue first accrues. In the present suit plaintiff stated that cause of action arose on 7<sup>th</sup> June 2019. Moreover as per Article 110 of Limitation Act, 1963, when a person is excluded from joint family property and seeks to enforce a right to share therein, the limitation period is twelve years from the date when the exclusion becomes known to the plaintiff. Thus,

suit for partition, limitation period is 12 years from the date of Knowledge to the plaintiff from her exclusion in ancestral property.

8. Now in present suit, issue of limitation, is a mixed question of law and fact. So, for deciding this issue, it needs entail trial. Issue of limitaion can not be decided merely plaint and documents support with it. In this circumstances I am of the opinion that, the case law *Tarvindrasing Dhillan* (cited supra) is not applicable to the present case as facts are different. In view of above situation I am of the opinion that suit is not fall within any sub rule of Order 7 of Rule 11. Therefore, the application is deserves to be rejected. Accordingly, I have proceed to pass following order.

**ORDER**

Application is hereby rejected.

Date – 18/03/2026  
Place - Gangapur

( R.N.Pathak )  
Jt. Civil Judge (S.D.),  
Gangapur