MHAU070023162025

ORDER BELOW EXH. 30 IN Spl. C. S. No.213/2025
Kadubai Popat Salunke and Ors. Vs. Uttam Maruti Shinde & Ors.

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 i.e. sale deed no. 985 dated 7/4/1992, sale deed no. 1469 dated 12/05/1992, sale deed no. 1276 dated 4/6/1996, sale deed no. 771 dated 26/2/1998, sale deed no. 1020 dated 20/03/2003, sale deed no. 5033 dated 18/10/2012, sale deed no. 3907 dated 15/9/2014, sale deed no. 1329 dated 1/7/1994. As per his contention sale deeds which plaintiffs want to challenged are old in nature i.e. near about 25 and 10 years old. As per law of limitation, prescribed period for challenging sale deed is three years. Plaintiffs are living in some parts of suit property and in a joint family. They are instituted the suit conjointly. Hence plaintiffs are having every knowledge about the sale deeds executed by their father. 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. It is the contention of plaintiff that, when suit is pending for the cross

examination of the plaintiff, this application is moved after a gap of near about 10 years. Only to prolong the suit this application is moved. The issue regarding limitation is already framed. For deciding issue of limitation, it needs entire evidence. More -over suit is also for seeking relief of partition. It is settled law that there is no limitation for filing partition suit. On these grounds plaintiffs urged to reject the plaint. I have also heard Ld Advocate of plaintiff Shri A.S.Shaikh.

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. *Ravi Bhaskar Wattamwar v/s Babanrao Narbaji More @ Baba s/o Naru More and others, 2025 (4) Mh.L.J. 356.* I have considered it in next reasoning next paragraph.

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. First of all, it is necessary to scanned ratio of above case law.

6. The ratio of case law Ravi Wattamwar (cited Supra) is, *"Observations of Trail Court that issue of limitation can not be decided at preliminary stage in application under Order 7, Rule 11 of Code can not be countenanced. If suit is barred by limitation, court need not protract decision on issue of limitation for trial. Plaintiff is challenging his right in suit properties which are alienated in years 1972 and 1975. plaintiff has no explanation for 43 years delay to assail infringement of his right. Plaint is liable to be rejected due to lack of cause of action and limitation. Impugned order passed by trial court set aside."* In short what

the Hon'ble High Court held that, when plaintiff not assailed his right after the long span of sale deed then issue of limitation must needs to be decided at preliminary stage as per under Order 7 Rule 11 of Code of Civil Procedure.

7. Now coming back to the present case, the case is part heard. Already defendants raised this issue of limitation in their written statement. As per rival contentions of both the parties I have already framed issue of limitation. Hence now suit is not at preliminary stage. On the contrary it is a part heard suit. No doubt for deciding this type of application, it only needs to scanned plaint and other documents. It is not necessary to scrutinize the evidence of plaintiff for deciding this application. But it also can not be overlooked that, when this suit is part heard and already issue regarding limitation was already framed, then this issue needs entail trial. Now in present suit, issue of limitation, is a mixed question of law and fact. So, for deciding this issue, it needs entail trial. In this circumstances I am of the opinion that, the ratio of case law Ravi Muttamwar (cited supra) is not applicable to the present case. 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 – 20/01/2026

DISTRICT COURTS MAHARASHTRA

Digitally signed by ROHIT NANDKISHOR PATHAK
Date: 2026.01.21 16:17:42 -0100

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

Place - Gangapur

C E R T I F I C A T E

I affirm that, the contents of this PDF file Judgment are same, word to word as per the original Order.

Name of the Stenographer : Balu Ashruba Age
Stenographer Grade 2

Court : CJSD Court, Gangapur.

Judgment date : 20/01/2026
Judgment signed by the
Presiding Officer on : 20/01/2026
Judgment uploaded on : 21/01/2026