

MHAU100006002024 	<u>R.C.S./104/2024</u> Maruti Girjaba Dhotre Vs. Gorakhnath Girjaba Dhotre
--	---

ORDER BELOW EXH.17

The defendant no. 2, 4, 8 and 9 filed application under order 7 rule 11 of C.P.C. for rejection of plaint. Wherein it is submitted that the plaintiff has filed suit for declaration and ownership on the basis of unregistered document dated 30.06.1971 and also claimed the mutation entry no. 350 dated 11.10.2003 is not binding. The plaintiff claimed declaration regarding partition deed dated 07.01.2014 is not binding to plaintiff. The plaintiff has claimed the relief are time barred. Therefore, prayed to allow the application.

02. On the contrary, plaintiff filed his say and opposed the application. It is submitted that the defendants have filed this application only to prolong the matter. It is further submitted that the document dated 30.06.1971 is though old but the plaintiff is absolutely blind and document not found.

03. It is further submitted that the mutation no. 350 dated 11.10.2003 is claimed to be barred by law. But the said entry can be challenged according to Bombay Revenue Jurisdiction Act. Only on the ground of delay the suit can not be rejected. Hence, prayed to reject the application.

04. Learned advocate of the defendants argued that the plaintiff

has filed suit on the basis of document which are not within the limitation. It is barred by law of limitation. He further argued that the Court can reject the plaint if the suit is barred by law of limitation. He placed his reliance upon the judgment of Hon'ble Supreme Court in *Nusli Neville Wadia V/s. Ivory Properties & Others (2020) 6 SCC 557*, *Raghvendra Sharan Singh V/s. Ram Prasanna Singh(Dead) by LRs. (2019), SCC 367* and *T. Arvindandam V/s. T.V. Satyapal & another (1977) 4 SCC 467*. The defendants though relied upon the above judgments. However, the copy of said citation have not been filed.

05. On the contrary learned advocate of the plaintiff the limitation is a mixed question fact and law. It cannot be rejected on this ground without appreciating the evidence on record. Hence, prayed to reject the application.

06. Heard respective parties. Perused the application, say and record of the case. From perusal of record it shows that the plaintiff has filed the suit for declaration and perpetual injunction against the defendants. It is the contention of the defendants that the plaintiff filed suit on the basis on unregistered document dated 30.06.1971. The plaintiff has filed the suit after the expiry of period of limitation. Therefore, the suit is liable to be rejected. On the contrary it is the contention of the plaintiff that he was blind and it is mentioned the reason in the plaint that they have not get the document and defendants are on 15.06.2024 obstructed to the plaintiffs.

07. The document is appears to be old dated 30.06.1971. However, on the sole ground of limitation the suit cannot be rejected without giving opportunity to the plaintiff to lead his evidence. Moreover, the limitation is mixed question of fact and law and the question of

rejecting the plaint on the ground has to be decided after weighing the evidence on record. Therefore, the opportunity has to be given to the plaintiff to lead their evidence. Thus at this stage on the ground of limitation suit cannot be dismissed. Hence I Pass following order.

ORDER

1. Application is rejected.

Date- 30.01.2026.

(G. D. Gurnule)
Jt. Civil Judge Jr. Div.
Khulatabad.