

MHCO120001502023



IN THE COURT OF JUDGE, CO-OPERATIVE COURT
NO.2, PUNE.

(Presided over by Shri. Hansraj K. Wankar)

Dispute No:- 133/2023

Amar Ashiyana Sahakari

Griha Rachana Sanstha Maryadit.

..... Disputant

V/s

Mr. Swapnil Anil Jagtap and Oth.

..... Opponents

Order below Exh. 13

(Passed on 10/09/2026)

This application came to be filed by opponents for rejection of
plaint under order 7 rule 11 (d) of the civil procedure code.

Nutshell in the application are as under:--

1. It is contended in the application that opponents have filed
their written statement and raised the issues pertaining to
limitation. According to opponents, this dispute is barred by
limitation under section 92 of the M.C.S. Act.

2. It is further contended in the application that relief sought
in the dispute that rights accrued by opponents attract the
execution of the assignment deed made signed and executed by
Mrs. Candida Shetty and opponents in the year 2014. Disputant is
challenging the rights, title and interest to own or use or occupied
disputed car parking. According to opponents, the cause of action
mentioned in the plaint is false, in correct and illusory in other to

filed dispute in the year 2023. The cause of action to file any dispute arise from the date of knowledge of happening of events . The execution of assignment deed has held between opponents and Mrs. Candida Shetty on 21/11/2014. On the said date, disputant society has issued the letter in favor of ICICI Bank in respect of creation of mortgage of flat no. 10. The said letter forms part and parcel of the register assignment deed. Disputant society is and was well aware about the facts of the said assignment deed as Mrs. Candida submitted all the forms of transfer of membership to the society. The said assignment deed contended the area of flat, terrace and parking area for which opponents have paid the required stamp duty. Disputant society was having the knowledge of the said fact since or from 2014. Hence, considering the date of knowledge and the period of limitation provided under section 92 of the M.C.S.Act, this dispute is hopelessly barred by limitation and said issue can very will be considered and decided under order 7 rule 11 of the code of civil procedure. Accordingly prayed to reject dispute.

3. To resist contention in the application, disputant society has filed its reply below ex. 15 denying all the allegation and contention in the application. Disputant society admits the execution of said deed dated 21/11/2014 which was held between Mrs. Candida Shetty and opponents. But it denied knowledge about the contention in the sale deed and more particularly regarding suit property or covered parking. According to disputant, the suit property is a property owned by the disputant. The builder did not allot the suit property to the original flat purchaser / original member Mrs. Candida Shetty. The said Candida Shetty unlawfully transferred the suit property to the opponents. The cause of action is continuous in nature. The cause

of action arose when by notice reply dated 04/1/2022, opponents claimed the right over the suit property denying disputant rights. Therefore this dispute came to be filed by disputant. On all the above grounds disputant society prayed to reject this application.

4. Heard the counsel of the opponents. Perused application and reply .

5. During argument counsel for opponents submitted that the original member of disputant society Mrs. Candida Shetty executed a deed of assignment in favor of opponent on 21/11/2014 and in the said deed the area of flat , terrace and parking area is mentioned. This dispute pertaining to car parking area. Disputant society is and was aware about the said facts since or from 21/11/2014. But disputant has filed this dispute in the year 2023 pleading falls cause of action. Therefore, this dispute is barred by limitation under section 92 of the M.C.S. Act and can be adjudicated under Order 7 Rule 11 d of C.P.C.

6. Defence of disputant society is that it was not aware about the contention mentioned in the assignment deed. Mrs. Candida Shetty unlawfully transferred suit property to the opponents. The suit property was never allotted to her by the builder. The cause of action for this dispute arose when opponents by their reply notice dated 04/01/2022 denied the disputant rights over the suit property.

7. It is settled position of law that the maintainability of suit and jurisdiction of the court required to be determined on the basis of averments in the plaint and not on the ground raised in defence. Perusal of averments in the plaint, it seems that disputant society has filed this dispute alleging that one Mrs. Candida Shetty

unlawfully transferred the suit property to the opponents which was never allotted to her by the builder. Disputant society is the owner of disputed property. It is pleaded para no. 13 that the cause of action for this dispute arose on 04/01/2022 when opponents claimed their rights over disputed property by way of reply notice. Therefore dispute is within limitation.

8. It is evident from the contention in the application that opponents are raising issue regarding limitation alleging that disputant society was aware about the suit property since or from 2014 which the disputant society denied in its reply. Issue of limitation is mixed question of facts and law. Taking into considerations the said facts, it apparently appears that issue of limitation raised by opponents is purely based on mixed question of facts and law. And Theretofore it cannot be adjudicated at this juncture under order 7 rule 11 (d) of the M.C.S. Act.

Hence, I am of the opinion that this application has no merit and it liable to be rejected. In the result I proceed to pass following order.:-

:- Order :-

1. Application below Exh. 13 filed by opponents under Order 7 Rule 11 (d) is hereby rejected.
2. No order as to costs.
3. Order pronounced in open court.

(Hansraj K. Wankar)

Date.: 10/09/2026

(Judge)

Place.: Pune

Co-operative Court No.2, Pune.