

MHKO100003302019	<u>ORDER PASSED BELOW EXH. 22 In</u> <u>RCS NO. 55/2019</u> (Babu Santu Patil etc 5 Versus Prabhakar Rama Aambekar etc 3)
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This is an application filed by the defendant No.1 under Order 7 Rule 11 (d) of the Code of Civil Procedure (in short 'the C.P.C.')

on the ground that the suit is barred by law of limitation.

02. It is contended by the defendant No. 1 that the present suit is filed for the declaration that the sale deed dt. 04/09/2010 is illegal and bogus and also for perpetual injunction against defendant No. 1. On 04/09/2010 defendant No. 2 has executed registered sale deed bearing no. 2425 in respect to suit property in favour of defendant No. 1 on received consideration. Thereafter, fer-far No. 830 was allowed and name of defendant No. 1 was recorded at 7/12 extracts of the suit property. Defendant no. 3 was present at the time of sale deed as he was one of the witness. From the date of sale deed defendant No. 1 has a ownership and possession over suit property. It is further stated that the suit is barred by limitation as it is instituted after 9 years from the date of sale deed dt. 04/09/2010. Plaintiffs and defendant No. 1 and 2 are well aware of the fact of execution of sale deed since 04/09/2010. Therefore defendant No. 1 is prayed to reject the plaint as it is barred by law of limitation.

03. Plaintiffs resisted the application by filing say at **Exh.24** denied the contentions of the application as it is falls and

incorrect. It is stated that defendant No. 1 has filed the present application with intention to delay the proceeding. It is further stated that the suit is instituted within limitation. Hence, prayed for rejection of application.

04. Heard Ld. Advocates for both the sides and perused material on record. This is a suit for declaration and perpetual injunction. It is settled principle of law that while deciding application under Order 7 Rule 11 of the CPC only the averments in the plaint are to be looked into, the defence of the defendant in the written statement can not be looked into but only the plaint.

05. It is the contention of defendant that suit is barred by limitation as the sale deed in regard of which declaration is sought is of the year 2010 and this suit is filed after 09 years. On perusal Article 56 and 58 of the Limitation Act, provided period of limitation in suit for declaration as 03 years from when the issue or registration becomes known to the plaintiff U/A 56 and when the right to sue first accrues U/A 58. On perusal of the plaint it shows that, plaintiffs contended that, they have come to know the fact of sale deed dt. 04/09/2010 in the month of February- 2018 when defendant No. 1 had illegally tried to trespass in the suit property. Hence prima-facie, it does not appear at this stage that the suit is barred by law of limitation.

06. Moreover, limitation being mixed question of law and fact cannot be decided merely on the averments in the plaint. In this context judgment of the Hon'ble Bombay High Court in

Ganesh Keshav Patole Vs. Shital Sikandar Darne, reported in 2018 SCC Online Bom 649 assumes importance, wherein it is held that, “as per the consistent view held by the various Courts on the issue of resjudicata and limitation, both these issues are required to be decided after evidence is led by the parties. This is too early a stage or pre-mature to reject the plaint under Order 7 Rule 11 of the CPC on these grounds.” in view of judgment of the Hon’ble Bombay High Court, issue of limitation raised by defendant No.1 cannot be decided in the application for rejection of plaint. In view of reasons discussed above I am of the view that plaint cannot be rejected on the ground of limitation. Hence, I pass following order.

- O R D E R -

1. The application **Exh.22** is rejected.
2. No order as to costs.

Date – 24/03/2022.

(S.N.NIKAM)
02nd Jt.Civil Judge Jr. Division,
Gadhinglaj.