

MHKO130000982025



R.C.S. No. 11/2025

Namdev Maruti Patil.

...Plaintiff

Vs.

Suhas Suresh Patil.

...Defendant

ORDER BELOW EXH. 11.

1] The present application is filed by defendant for rejection of plaint under Order VII Rule 11(a) to (d).

2] Vide the present application, defendant contended that plaintiff has filed this suit for declaration & perpetual injunction. There is no cause of action arose for filing of the present suit. There is bar for the present suit vide the provisions of Suits Valuation Act. The suit is not filed within limitation. Hence, the defendant prayed for rejection of the suit vide Order VII, Rule 11 (a) to (d).

3] On the other hand, by filing say at the back page of the application, the plaintiff has strongly opposed the application contending that, the contents in the application are false and misleading. The application is not filed as per the provisions of Order VII, Rule 11 of C.P.C. Plaintiff has filed the suit for perpetual injunction and declaration and is not barred by any law. Hence, the plaintiff prayed for rejection of the application.

4] Heard the learned advocate for defendant and plaintiff at sufficient length. Learned advocate for the plaintiff relied upon

case laws:-

P. Kumarkurubaran Vs. P. Narayanan and Ors.

I have carefully gone through the above cited case laws.

5] The present application is filed by defendants under the provisions of Order VII Rule 11 of the Code of Civil Procedure. In the present context, it is necessary to reproduce here the relevant provisions of the Order VII Rule 11 of the Code of Civil Procedure.

**11. Rejection of plaint-** The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9

6] It is provided in Order VII Rule 11 of the Code of Civil Procedure that plaint shall be rejected where it appears from the statement in the plaint to be barred by any law and where it does not disclose a cause of action. It is well settled that while deciding the application under Order VII Rule 11 of the Code of Civil

Procedure, only the plaint averments needs to be seen and it is not necessary to see the defence taken by defendants.

7] On perusal of plaint, it appears that the present suit is filed vide Section 31, 34, 38 of Specific Relief Act, 1963 for seeking the relief of declaration & perpetual injunction against the defendants. While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the Plaintiff the right to relief against the Defendant. Every fact which is necessary for the Plaintiff to prove to enable him to get a decree should be set out in clear terms. A cause of action must include some act done by the Defendant since in the absence of such an act no cause of action can possibly accrue. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court.

8] The basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code. On perusal of the plaint, it appears that plaintiff has mentioned the cause of action arose on 21/01/2022 when the plaintiff got knowledge of the alleged will-deed dated 30/04/2018 in the matter of S.R.No.117/2022 and when the defendant speak about transferring the suit property.

9] No doubt, the averments in the written statement as well as contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint.

The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. On scrutiny of the plaint, it appears that plaintiff made averments that on 21/11/2022, they acknowledged the execution of will-deed dated 03/04/2018 in the matter of S.R.No. 117/2022 and defendants speak about transfer of the suit property by mortgage, lien, sale. However, the paragraph 8 & 9 of the plaint elaborately deals with the how the cause of action arose to the present suit.

**10]** In the light of the specific prayers of plaintiff and the issue of limitation raised under Order VII Rule 11(d), here reference to Article 58 & 59 of the Limitation Act, may be conveniently made. As the plaintiff has prayed for declaration that the aforesaid sale deeds are not binding on the plaintiffs share and by declaring it as canceled or set aside, it would be just and proper to reproduce the relevant Articles for reference:

| Article   | Description of suit                                                                 | Period of limitation | Time from which period beings to run                                                                                                                |
|-----------|-------------------------------------------------------------------------------------|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>58</b> | To obtain any other declaration                                                     | Three years          | When the right to sue first accrues.                                                                                                                |
| <b>59</b> | To cancel or set aside an instrument or decree or for the rescission of a contract. | Three years          | When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him. |

**11]** By virtue of Article-58, in order to seek any

declaration, the period of limitation is 3 years and it begins to run when the right to sue first accrues. Moreover, vide Article-59 in order to seek cancellation or set aside an instruments, the period of limitation is three years and it begins to run when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him. The emphasis under Article 59 is not on the date of the transaction per se, but on the accrual of the cause of action, which, in cases involving allegations of fraud or unauthorized execution of documents, hinges upon the date on which the plaintiff acquired knowledge of such facts. Moreover, in the present case plaintiff reveals that plaintiff has got the knowledge of aforesaid will-deed on 21/11/2022 when he received the copy of the will-deed in the matter of S.R.No. 117/2022.

**12]** I have carefully gone through the above cited supra relied upon by the learned advocate for the plaintiff. Vide the above cited supra, it is observed that limitation is a mixed question of law and fact where the plaint specifically pleads facts alleging fraud or unauthorized execution of documents (sale under a limited Power of Attorney) and asserts a date of knowledge of such facts which brings the suit within the limitation period prescribed by Article 59 of the Limitation Act, 1963, the issue of limitation becomes a mixed question of law and fact. Such a question cannot be decided at the preliminary stage under Order VII Rule 11(d) based merely on plaint averments and requires trial.

**13]** At the outset, it needs to mention here the present suit is filed for declaration and perpetual injunction. Vide the present suit, plaintiffs prayed for declaration that the alleged will-deed dated 03.04.2019 is bogus, false and not binding on the share of

the plaintiff. Moreover, vide the present suit plaintiff has given the details regarding the valuation which has been given vide Section 6(4)(j) of the Maharashtra Court Fees Act, at paragraph 10 & 11 of the plaint.

14] It is significant to note that vide the present application defendant submitted that the suit is barred by provision of Suits Valuation Act. However, the application is completely silent about the specific provision which is applicable to the present suit or the specific provision of the Suit Valuation Act which bars the present suit. More importantly, in the plaint vide paragraph 10 & 11, the plaintiff has stated in detail the amount at which the values the relief sought, with the reasons for the valuation.

15] More importantly, plaint paragraph no. 8 & 9 elaborately discloses cause of action arose for filing of the present suit. To sum-up, in view of the aforesaid reasons, I am of the considered view that the relief claimed in the plaint is properly valued & sufficiently stamped accordingly. It is well settled law that the question with respect to the limitation is a mixed question of law and facts which can be decided only after the parties lead the evidence is concerned. Considering all the above factual and legal aspects, I am of the view that the application is deserved to be rejected. Hence, I proceed to pass following order :-

**ORDER**

Application (Exh.11) is rejected.

Date : 30/01/2026  
Kagal.

( **Pranita S. Patil** )  
Jt. Civil Judge, J.D. Kagal.