

Order below Exh.17 in Regular Civil Suit No.2/2017.

This is an application moved by the defendant No.2 to 4 for rejection of plaint under Order 7 Rule 11 (d) of the Code of Civil Procedure.

2) Heard learned advocate Shri. V.B. Kadukar for the defendants and learned advocate B.G. Kamble for the plaintiffs. Perused the application and say.

3) The defendants contended that plaintiffs have instituted the suit for the relief of declaration and perpetual injunction. The plaintiffs in the column of cause of action have clearly stated that they got the knowledge about the execution of sale deed dated 15/11/1991 in the year 1991. Therefore, in view of the Limitation Act, the plaintiffs have to sought the relief of declaration within three years from the execution of sale deed. But the plaintiffs have instituted the suit after the lapse of 25 years. Hence, the relief of declaration of sale deed is barred by limitation. Therefore, the suit is liable to be rejected.

4) The plaintiffs opposed the application by filing say vide Exh.20. Plaintiffs denied the contentions raised in the application and prayed to reject the application.

5) The perusal of plaint revealed that plaintiffs have sought the relief that the sale deed executed by the defendant No.1 in favour of deceased Ningappa Ramchandra Gawade be declared as null and void and not binding on their shares. The plaintiffs have also prayed that the defendants be restrained from obstructing to their peaceful possession over the suit property.

6) It is settled law that limitation is mixed question of fact and law. Hence, the fact in issue that, relief of declaration of sale deed is barred by limitation cannot be decided without the evidence of parties.

7) Even if for the sake of argument, court comes to conclusion that, the relief of declaration of sale deed is barred by limitation but on that count the entire claim cannot be rejected. Hence, I hold that application is liable to

be rejected. Hence, I proceed to pass the following order.

Order

1. The application is rejected.
2. Costs in main cause.

Sd/-

(M. D. Thombare)

Civil Judge, Jr. Dn., Chandgad.

Dated:- 10/01/2018.

CERTIFICATE

I affirm that the contents of this P. D. F file Judgment/Order is same, word to word, as per the original Judgment/Order.

Name of the Stenographer	Shri. V. L. Tadkod, L. G. Stenographer.
Name of Court	Shri. M.D. Thombare, Civil Judge, Junior Division and Judicial Magistrate, First Class, Chandgad.
Date of Dictation	10/01/2018
Judgment/Order signed by the P. O. on	10/01/2018
Judgment/Order uploaded on	10/01/2018

