

MHKO160007882021



Order below Exh. 48 in R.C.S.No.108/2021

1. The present application is filed by Defendant Nos. 3 and 4 under Order VII Rule 11(a) of the Code of Civil Procedure seeking rejection of the plaint on the ground that it does not disclose any cause of action. It is contended by the applicants that they had earlier filed an application under Order VII Rule 11(d) of the C.P.C. at Exhibit-24, which came to be rejected by order dated 21/04/2023. The plaintiffs have instituted the present suit seeking declaration, partition and separate possession, cancellation of the sale deed, and perpetual injunction. Defendant Nos. 1 and 2 are the parents of the plaintiffs. The plaintiffs have sought cancellation of the sale deed dated 01/07/1998 bearing Registration No. 1213/1998, whereby Defendant No. 1 sold land admeasuring 1 Hectare 60 Gunthas to Defendant No. 3. It is contended that Defendant Nos. 3 and 4 are in continuous possession of the suit property. According to the applicants, the plaintiffs have not sought consequential relief of possession and, therefore, the suit is not maintainable. It is further contended that the suit property was lawfully transferred by Defendant No. 2 to Defendant No. 1 and thereafter lawfully sold to Defendant No. 3. Hence, the plaintiffs have no locus standi to file the present suit. It is further contended that Defendant No. 2 had applied before the Tahsildar, Shahuwadi, under the Government of Maharashtra policy for transfer of land from husband to wife. Accordingly, an order dated 27/09/1996 was passed and Mutation Entry No. 510 dated 16/10/1996 was recorded. The plaintiffs have not challenged the said order. By the year

2013, all the plaintiffs had attained majority, yet no objection was raised. The plaintiffs have also not challenged the order dated 27/09/1996 passed in RTS Case No. 32/1996. Hence, according to the applicants, no cause of action survives to challenge the sale deed. It is further contended that the suit, having been filed in the year 2021, is barred by limitation and is therefore not maintainable. On these grounds, rejection of the plaint under Order VII Rule 11(a) of the C.P.C. is sought. The defendants have relied upon the following judgments:

I. *Chandan Kumar Sarkar v. Nirmalendu Banikya and Anr.*, AIR 2018 Gauhati 193

II. *Ajay Chaudhary v. Milind Bhalerao*, 2025 (3) Mh.L.J. 341

III. *Jayesh Kadam v. Andrew D. Fernandes*, 2024 (6) ABR 371

IV. *Tarvindarsingh Dhillan v. Ambadas Mhaske*, 2024 (3) ABR 135

2. The plaintiffs filed their say opposing the application and contended that the present application has been filed with an intention to mislead the Court. It is submitted that the plaint specifically discloses the cause of action for the suit. It is further contended that the earlier application filed under Order VII Rule 11(d) was rejected on merits and that the contentions raised in the written statement are altogether different from those raised in the present application. According to the plaintiffs, they have clearly pleaded the cause of action and have also produced supporting documents. It is submitted that the present application has been filed only to delay the proceedings. Hence, rejection of the application with costs is prayed for.

3. Heard the learned advocates for both sides. Perused the record.

4. It emerges from the record that the present suit is filed for partition, possession, cancellation of the sale deed, and perpetual injunction. It is also evident that Defendant Nos. 3 and 4 had earlier filed an application under Order VII Rule 11(d) seeking rejection of the plaint on the ground of limitation, which came to be rejected by order dated 21/04/2023 passed below Exhibit-24. The present application under Order VII Rule 11(a) is dated 01/08/2025. At the outset, it is pertinent to note that the defendants have not offered any explanation as to why the present grounds were not raised in the earlier application. On perusal of the present application at Exhibit-48, it is clear that the defendants seek rejection of the plaint solely on the ground that it does not disclose a cause of action.

5. Order VII Rule 11(a) specifically empowers the Court to reject a plaint only when it does not disclose a cause of action. A perusal of the plaint reveals that in paragraph 5, the plaintiffs have clearly and specifically pleaded the cause of action for filing the present suit. Whether the cause of action so pleaded is ultimately valid or sustainable in law is a matter to be decided after leading evidence and cannot be adjudicated at this stage. The defendants have also raised the issue of locus standi. However, on a bare reading of the plaint and the averments therein, it can prima facie be held that the plaintiffs have the locus standi to institute the present suit. As regards the contention of limitation, it is needless to state that this issue has already been adjudicated and decided by this Court while rejecting the application at Exhibit-24. Once the issue of limitation has been decided, it cannot be reopened by filing a subsequent application under Order VII Rule 11 on the same ground.

6. The judgments OF Hon'ble High Courts relied upon by the defendants lay down the settled principle that a plaint can be rejected if it does not disclose a cause of action. In the present case, as discussed hereinabove, the plaint does disclose a cause of action in paragraph number five. Therefore, the said judgments do not advance the case of the defendants in the facts and circumstances of the present matter. The judgment cited at Serial No. IV pertains to limitation, which issue already stands concluded, and hence the same is not applicable at this stage.

7. In view of the foregoing discussion, it is clear that the plaintiffs have disclosed a cause of action for filing the present suit. The contentions raised by Defendant Nos. 3 and 4 are devoid of merit. Consequently, the present application deserves to be rejected. It is also significant to note that the defendants have repeatedly raised the issue of limitation in both the present application and the earlier application at Exhibit-24. This clearly indicates that the present application has been filed with an intention to prolong the proceedings. Such conduct deserves to be deprecated and curbed by imposing costs. Accordingly, the present application stands rejected with costs.

ORDER

The present application is rejected with cost of Rs.1,000/-
to be paid the plaintiff.

Shahuwadi
Date : 09/01/2026

(P. B. Pawar)
Civil Judge, Jr. Division,
Malkapur-Shahuwadi,
Dist- Kolhapur