

MHND230002362007



**ORDER BELOW EXH. 149**

(Dated : 08/03/2022)

01. This application is filed on behalf of defendant No. 5 namely Nagnath Papulwad under Order VII Rule 11 (d) of Civil Procedure Code for the Rejection of Plaint. It is averred in the application that, the plaintiffs filed instant suit against defendant No. 5 for declaration that, sale-deed bearing No. 2485/2003 dated 08/12/2003 is an ineffective and not binding on their rights. Defendant No. 5 is bona-fide purchaser of an agriculture land bearing Gut No 148 Adm. 67 R. situated at Sawarmal Tq.Mukhed. There is no pleading of plaintiffs in the plaint in respect of how the suit is filed within prescribed period of limitation. The plain reading of the plaint clearly shows that, suit is not filed within prescribed period of limitation. The plaintiff did not state specific date on which they received an information about execution of sale deed executed in favour of defendant No. 5 therefore, plaint be rejected.

02. The plaintiffs opposed this application by filing reply at Ex. 150. It is contention of plaintiffs that, on 20/08/2008 the present suit was dismissed in default for want of prosecution. The plaintiff filed an application at (Exh. 39) dated 18/04/2016 for amendment of plaint, which came to be allowed by the court. The plaintiff has specifically stated in para No. 4 (A) when they received an information of execution of sale deed in favour of defendant no.5 therefore, application be rejected.

03. Peruse the application, heard Ld. counsel for defendant No.5 Shri.S. S. Gopchade and Ld. counsel for plaintiffs shri. S. D. Satale. The

record shows that, the plaintiff filed on record copy of amendment plaint vide Exh. 1/A dated 30/11/2017. It is pleading of plaintiff in para No. 4-A therein as under;

"सदरील दाव्यातील मालमत्ता विक्री झाली आहे अशी माहिती वार्दीना २०१४ साली झाली आहे. त्यापुर्वी त्यांना सदरील खरेदीखताची माहिती नव्हती. तसेच त्यांच्या वकीलांकडून प्रतिवादी क्र. २ चा काय लेखी जबाब आला आहे याची सुध्दा माहिती नव्हती. प्रतिवादी क्र. १ व २ यांनी वार्दीना त्यांचा कायदेशिर हिस्सा मिळु नये म्हणुन वादग्रस्त मालमत्ता इतर लोकांना विक्री केली आहे परंतू हिंदू कायद्याप्रमाणे मुलींना जन्मजात समान हक्क प्राप्त होतो आणि झालेले खरेदीखत हे कायदेशिर गरजेसाठी विक्री केलेली नाही त्यामुळे ते खरेदीखत त्यांच्यावर बंधनकारक नसून ते त्यांच्या हक्कापर्यंत निष्परिणामकारक आहे."

**04.** The record shows that, present suit filed on 11/04/2007 against defendant No. 1 and 2 only. Meanwhile the suit came to be dismissed in default for want of prosecution on 20/08/2008. The plaintiffs filed restoration application bearing No. 23/2014 which, came to be allowed by the court. Thereupon, the plaintiffs filed an application below (Exh.39) for amendment in plaint dated 18/04/2016 which, came to be allowed by My Ld. predecessor by passing an order dated 18/11/2017. The Amended plaint Exh. 1/A filed on record on 30/11/2017. The name of defendant No. 5 first time added in present suit on 30/01/2017 by filing amended plaint. It means present suit instituted against defendant No.5 on 30/11/2017. In para No. 4-A of amended plaint, it is specific pleading of plaintiffs that, they obtained an information in respect of sale deed bearing No. 2485/2003 in the year of 2014 when suit came to be dismissed and restoration petition was pending. It is pleading of plaintiffs that, agriculture land bearing Gut No. 148 Adm. 67 R. is their ancestral property. The plaintiffs challenged sale deed bearing No. 2485/2003 dated 08/05/2003 in amended plaint 1/A filed on 30/11/2017. It is pleading of plaintiffs that, they were excluded from joint family property by making alienation in favour of defendant No. 5. According to Article 110 of Limitation Act, the period of limitation is 12 years when the exclusion became known to the plaintiffs. So far as

present case is concerned, the plaintiffs received an information in respect of alienation of suit property in favour of defendant No. 5 in the year of 2014 first time, the present suit is instituted against defendant No. 5 on 30/11/2017 therefore, it can be said that, present suit is filed within limitation. The order VII Rule 11(d) of Civil Procedure Code empower the court to reject the plaint when suit is barred by law. The averments of amended plaint dated 30/11/2017 clearly state that, it is filed within prescribed period of limitation hence, present application is not maintainable in the eyes of law.

**05.** In support of this application, Ld. counsel for defendant No. 5 placed reliance on the following precedent of Hon'ble Apex Court.

1) *Dhaiben Vs. Arvindbhai Kalyanji Bhanushali* decided on 09/07/2020 reported in LAWS (SC) 2020 7 3.

2) *Raghwendra Singh Vs. Ramprassana Singh* decided on 13/03/2019 reported in LAWS (SC) 2009 3 94.

The precedent of Hon'ble Bombay High Court Bench Nagpur in case of 3) *Gaurav Bhirad Vs. Tukaram Dhagekar* reported in LAWS (BOM) 2018 2 157 also filed on record,

**06.** In case of *Dahaiben (cited supra)* the Hon'ble Apex Court rejected the plaint under order VII Rule 11(d) by observing that, the suit was clearly barred by limitation as per article 49 of limitation Act. So far as present case is concerned, the averments of amended plaint indicate that, suit is filed within limitation hence, it is my humblest view that, observation of Hon'ble Apex Court in case of *Dahiben* is not applicable to present case.

**07.** In case of *Raghwendra Singh (cited supra)* the Hon'ble Apex Court set aside the order of Hon'ble High Court. The Hon'ble High Court observed that, the question with respect to limitation is mixed question of law and facts, which can be decided only after the parties lead evidence.

So far as present case is concerned, the court observed that, the present suit is filed within limitation against defendant No. 5 therefore, it is my humblest view that, the observation of Hon'ble Apex court is not applicable to the fact of present case.

08. Facts in case of *Gaurav Bhirad (cited supra)* and present case are not identical with each other as the court observed that, present suit is filed within prescribed period of limitation against defendant No. 5 in view of Article 110 of limitation Act. The plaint under order VII Rule 11 (d) may be rejected when it is barred by law. As I earlier discuss that, there is no ground to reject the plaint. However, it is necessary to make clear that, observation of this court is restricted to this order. Defendant No. 5 shall at liberty to argue on the point of limitation by relying admission given by plaintiffs in suit if any. Hence, I pass upcoming order;

**ORDER**

Application below (Exh.149) is hereby rejected.

Dated : 08/03/2022

Sd/-  
( S. G. Shinde )  
Jt. Civil Judge J. D.  
Mukhed

## C E R T I F I C A T E

I affirm that the contents of this PDF file Judgment/order is same word to word, as per the original Judgment/order.

Name of Stenographer/Clerk : S. G. Dhakne (Jr. Clerk)

Court : Jt. Civil Judge Jr. Dn., Mukhed.

Date : 08/03/2022

Judgment signed by the Presiding Officer : 08/03/2022

Judgment uploaded on : 22/03/2022