

ORDER BELOW EXH.33

This is application moved by the defendant Nos. 2 and 3 for rejection of plaint under Order 07 Rule 11 of the Civil Procedure Code.

2. It is contention of the applicants that the plaintiff has challenged transaction i.e. Sale-deed No. 4282 dtd. 12/07/1993 which is out of limitation. Next prayer is about sale-deed No. 641/2025, in which the consideration about is mentioned as Rs. 21 lacks. Therefore, this court has no jurisdiction to try this suit. Hence, it is prayed to reject the plaint.

3. The plaintiff has resisted the application by filing say on Exh. 36 and contended that the law of limitation is mixed question of law and fact. Therefore, it cannot be considered at the time of this application under Order 07 Rule 11 of the Code of Civil Procedure.

4. The sale-deed in favor of defendant Nos. 2 and 3 is executed during the pendency of the suit. Therefore, the sale-deed is not binding and therefore it cannot be said that this court has no jurisdiction to try this suit.

5. Heard Ld. Advocates for the plaintiff and defendants Ld. Advocate for the plaintiff has relied upon the following citations.

1. P. Kumarakurubaran Vs. P. Narayanan & Ors., 2025 Supreme (SC) 745, Supreme Court of India.

2. Dilip Khushalchand (Srisrimal) Jain and Ors. Vs. Hardik Deepakbhai Ramani and Ors., 2022 Supreme (Bom) 1743, Bombay High Court (Aurangabad Bench).

6. On perusal of the plaint, it appears that, the plaintiff has

claimed declaration that the sale-deed of the year 1993 is not of the particular land, i.e. suit land. Therefore, declaration has sought that on the basis of sale-deed, defendant No. 1 not became owner of the suit land. It is further consequential relief of injunction not to alienate the suit property and for recovery of possession.

7. The plaintiff's objection is about limitation. It is pertinent to note that law of limitation is mixed question of law and fact. Therefore, it cannot be decided at the time of this application.

8. Moreover, Ld. Advocate for the plaintiff has relied upon the case law i.e. *P. Kumarakurubaran Vs. P. Narayanan & Ors., 2025 Supreme (SC) 745, Supreme Court of India*. In that case the Hon'ble Supreme Court has held that the Law of Limitation is mixed question of law and fact and therefore, on the basis of point of limitation suit cannot be rejected. Therefore, this plaint cannot be rejected on the point of limitation.

9. Next aspect is of pecuniary jurisdiction of this court. As per contention of the plaintiff the consideration amount of sale-deed of defendant Nos. 2 and 3 is Rs. 21 lacks. Therefore, this court has no jurisdiction. In this regard it is to be mentioned that Ld. Advocate for the plaintiff has relied upon the case of *Dilip Khushalchand (Srisrimal) Jain and Ors. Vs. Hardik Deepakbhai Ramani and Ors., 2022 Supreme (Bom) 1743, Bombay High Court (Aurangabad Bench)*. Ld. Advocate for the defendants has argued that this court has no pecuniary jurisdiction to entertain this suit as the amount of consideration of sale deed is Rs. 21,00,000/-. In this regard Ld. Advocate for the plaintiff has vehemently argued that the plaintiffs are not party to the sale-deed

and they are not bound to value the suit as per consideration amount. They are not bound to pay court fees thereon. I have gone through the case law. In that case Hon'ble High Court has held in the similar case that person who is not party to the sale-deed is not bound to value the suit as per consideration of sale-deed and is not bound to pay court fees accordingly. I reproduce para Nos. 24 and 26 of the said judgment.

24. From the above discussions in our judgment, Section 6(iv)(ha) would be applicable only to the Plaintiff who is a party to the sale-deed seeking declaration of avoidance of sale-deed. It would not be applicable to the Plaintiffs who are not party to the instrument seeking declaration of avoidance of sale-deed. Such Plaintiff would be governed by Section 6(iv)(j) as it is not susceptible to monetary evaluation.

26. In view of the above, answer to the reference is that the court fee payable in regard to a suit for declaration of the sale-deed to which the Plaintiff is not a party to the sale-deed binding on him and for consequential injunction would be governed by Section 6(iv)(j) of Maharashtra Court Fees Act.

10. The above case law is squarely applicable to the case in hand. In that case the same question has been arose and it was contended that person who is not party to the sale-deed is also require to value the suit as per consideration paid in the sale-deed and require to pay court fees. However, the Hon'ble High Court rejected that injunction and held that the person who is not party to the instrument is not bound to value the suit as per consideration amount. In this case the plaintiff not being party to the sale deed, not required to value the suit and pay court fees as per consideration paid in the sale deed. Therefore, in view of above case law, I am of the considered opinion that the plaintiffs have properly valued and properly paid the court fees which is well within pecuniary

jurisdiction of this court. In view of above discussions I proceed to pass the following order;

ORDER

Application Exh. 33 is rejected.

Place : Yeola.

Date : 23.02.2026.

(J. R. Pathan)

2nd Jt. Civil Judge, Jr. Division, Yeola
Dist. Nashik