

MHNS230017662015



Reg.Civil Suit No. 177/2015

Poonam Yadav

-Vs-

Harishchandra Gole & Ors

Common Order Below Exh.44 & 54

(Passed on this 20th day of January, 2026)

This is the application for rejection of plaint under order 7 rule 11 of the Code of Civil Procedure, 1908 (Code for short).

1. It is submitted by the defendants No. 1 to 9 and 11 to 18 that, the instant suit had been filed for the relief of Partition, declaration and permanent injunction. Defendants along with their written statement furnished documents on record and thereby pleaded that suit property is not an ancestral property. Thus, plaintiff has no right to file this suit. Further, suit property was in the name of Smt. Parvtabai Ganpat Gole who expired without any child on 09/09/1985. Thus, her four nephew namely Tukaram Sakharam Gole, Gajanan Sakharam Gole, Harishchandra Sakharam Gole, Ramchandra Shivram Gole and one Daughter namely Shantabai Shankar Parte being the only legal heir, their name came on the suit property vide Mutation Entry No. 510 dated 17/01/2016. Further, suit property is not an ancestral property of defendant No. 1 to 9 and the same was never been in the name of father of defendant No. 1 namely Sakharam Gole. Thus, plaintiff has filed this suit by suppressing the material fact. Further defendant No. 1 has six daughters and one son out of which plaintiff is the elder daughter of defendant No. 1 and defendant No. 2 to 6 and 8 are daughters. Defendant No. 9 is the son and defendant No. 7 is the wife. When plaintiff was six years old she was kept for education at the home her maternal uncle namely Pradip Raghunath Chavhan. Further education

after 7th standard were done by plaintiff at Mahatma Gandhi Vidyalay till 10th standard. Further, defendant No. 1 was serving in the railway and in the year of 1991 first wife of defendant namely Geeta expired because of illness. As plaintiff was the elder daughter defendant No. 1 used to give entire salary in the hands of plaintiff and plaintiff used to manage all transactions of home. In the year of 1992 defendant No. 1 perform second marriage with defendant No. 7 and out of their wedlock there having defendant No. 8 and 9 as their children. Despite of this fact defendant No. 1 kept entire management of home under the control of plaintiff. During that period defendant No. 1 suffered from many disease and plaintiff started to ignore defendant No. 1 and other younger siblings. Not only this plaintiff perform love marriage with Pradip Yadav against the will of defendant No. 1. Ever since then plaintiff is living separately from defendant. In the year of 2008 defendant No. 1 got retired from the service and without considering his future he distributed entire amount of his pension and gratuity among all children and his wife. Not only this defendant No. 1 gave her share which came to be accepted by her. Further, in the year of 2013 defendant No. 1 had a heart attack and since then he has been receiving the medications therefor. Doctors advised everyone not to give any psychological or physical trouble to defendant No. 1. But as plaintiff is having pressure from her husband and in-laws, she without considering the health condition of defendant No. 1 she is quarreling with defendant No. 1 for money and property. Despite of having supplied intermittently money to plaintiff the greed of in-laws of plaintiff did not stop. Resultantly she has filed this bogus suit. They further submitted that, suit property is not an ancestral property and the same came in the name of defendant No. 1 after the demise of his aunt namely Parvtabai Ganpat Gole, He had every right to

dispose of such property as per his own will and that too without the consent of plaintiff. By using that right only, defendant No.1 sold out the suit property to defendants for benefit of his family. Plaintiff has no concern with the share of defendant No.11 and 18 and no cause of action arose to file suit against them. Hence, they are praying for rejection of plaint with special compensatory cost of Rs. 50,000/-.

2. Application is contested plaintiff by filing her say on the same application and thereby submitted that, the contents and reasons which is mentioned the present application is not true. Defendant No.1 to 4 and 4 to 9 admitted that property is ancestral in their written statement and sale deed. Hence, the application is not tenable and liable to be rejected. Thus, prayed for rejection of this application.

3. During the course of argument Ld. Counsel for the plaintiff relied on the authority of **Vikas s/o Ashok Pakhare and another Vs. Jayashree w/o Vinodchandra Saraf and others, 2023(3) Mh.L.J.121**, wherein it is observed by Hon'ble Bombay High Court that,

“ When original defendants claim exclusive ownership of suit land, as per mutation entries, all questions regarding ownership and mutation entries require evidence at trial. Mutation entries itself do not confer title. Presumption as to title cannot be drawn unless preexisting rights of transfer of property under any instrument, decree, or title deed preceding mutation entry is brought on record. Issue of limitation also needs trial to ascertain date of knowledge of exclusion of rights of plaintiff from joint family property. Plaintiffs cannot be unsuited at nascent stage of suit based solely on mutation entry, unless specific knowledge of exclusion of right is brought on record. Issue as to

exclusion of rights and nature of cause of action needs trial. When defendants started dealing with property with outsiders of family, cause of action to file suit arose.

Remedy under Order 7, Rule 11 (a and b) of Code is a drastic step Unless upon recording of stipulations in plaint and documents annexed thereto definite conclusion as to bar of suit by limitation is discernible, suit cannot be terminated on defence of limitation.”

4. I have given my anxious consideration to the application and say thereon. The suit is filed for Partition, declaration and permanent injunction. It is the theory of the defendant that, the suit property was in the name of deceased Parvtabai who expired without any child on 09/09/1985. Thus, after her the suit property came in the name of her four nephew and one niece vide Mutation Entry No. 510 dated 17/01/2016. Out of those four nephew defendant No.1 was one of them. Further, suit property is not an ancestral property, he had every right to dispose of the same as per his own will and without the consent of the plaintiff. Accordingly, he sold out the suit property to defendants for the benefit of his family. But, plaintiff despite of this fact filed this bogus suit. The whole theory of the defendant rest on the Mutation Entry No. 510 dated 17/01/2016. Based on this Mutation Entry only defendant is claiming the suit property is self acquired property of defendant No. 1 as it had been received to him being legal heir of his aunt deceased Parvtabai. On perusal of the Mutation Entry bearing No.510 it prima facie appears that, indeed, as deceased Parvtabai expired without any issue the suit property came in the name of her four nephew and one niece out of which defendant No.1 is one of the nephew. But, considering the guidelines of the authority of Vikas Pakhare (supra), Mutation Entries

itself do not confer title and all questions regarding ownership and Mutation Entries require evidence of trial. Further, presumption as to title cannot be drawn unless pre-existing rights preceding Mutation Entry is brought on record. Further, If during the trial if it is proved Suit property is an ancestral, defendant No.11 to 18 would be necessary parties. Also, issue of limitation also needs trial. Hence, when the main base of this application is the Mutation Entry bearing No. 510 dated 17/01/2016 and the question as to such Mutation Entry requires trial, it cannot be said that, no cause of action arose to plaintiff to file this suit. Hence, I proceed to pass following order.

Order

Applications are Rejected.

Date : 20/01/2026

Place : Igatpuri

(Rajkiran U. Ingle)
2nd Joint Civil Judge (Jr.Dn.),
Igatpuri.