

RCS. No. 238/2023

Dattatre Ors Vs. Chandrakant Ors

Order Below Index Title No. 106 dated 03.02.2024

[Passed on 28.10.2025]

Perused the application and say. Heard learned advocate for defendants and learned advocate for plaintiff.

02. Present application is moved by defendant No.5 for rejection of the plaint under Order VII [7] Rule 11 of the Code of Civil Procedure, 1908 [hereinafter "the Code"].

03. According to the defendant, the plaintiff has no locus standi to institute the present suit, which has been improperly framed and is not in conformity with the mandatory provisions of the Code of Civil Procedure, 1908. It is further submitted that, the plaint discloses no valid cause of action as required under Order VII Rule 11(a) CPC and is therefore liable to be rejected in limine. The plaintiff has failed to include the ancestral share of Defendants No. 4 and 5, and the father of these defendants, Late Shri Shripati Dhanaji Alhat, never executed any document such as a partition deed, family arrangement, or will during his lifetime. He died intestate, and hence, the plaintiff's claim, being vague, ill-founded, and devoid of legal basis, deserves outright dismissal.

04. It is further submitted that, the claim for any judgment or decree in respect of the suit property is wholly barred by law under Order VII Rule 11(d) CPC, as the plaintiff has neither the legal right nor the entitlement to maintain the proceedings. The plaint contains false and misleading statements, and the nature of the document relied upon by the

plaintiff is uncertain, as it is not clarified whether it constitutes an allotment letter, family arrangement, or will. The alleged document, executed merely on a Rs. 5 stamp paper, lacks authenticity and credibility and appears to have been fabricated to deprive Defendant No. 5 of her legitimate rights. Even if treated as a distribution letter, it is invalid in law, as Late Shri Shripati Dhanaji Alhat was the sole owner, and there could be no question of distribution among co-sharers.

05. It is further submitted that, if the document is considered a family arrangement, it is defective and unenforceable since it does not bear the signatures or names of all legal heirs, including sons, daughters, and the wife of the deceased, nor is it registered or notarized as required by law. Similarly, if the document is alleged to be a will, it fails to comply with the essential formalities of execution and attestation, lacks a medical fitness certificate of the testator, is unregistered and unnotarized, and nowhere expresses that it represents his last wish. The disputed document, allegedly executed in 1987, is stale, unregistered, and beyond the limitation period prescribed for enforcement of rights under any such instrument. As the deceased expired in 2006, the plaintiff's attempt to rely on this document after a lapse of nearly eighteen years is highly suspicious and barred by limitation. The long silence of the plaintiff and co-defendants further casts serious doubt on the genuineness of the claim.

06. It is further submitted that, the claim of plaintiff is untenable under Sections 17, 49, and 50 of the Registration Act, 1908, as the unregistered document relied upon cannot create or declare any right, title, or interest in immovable property, nor can it be received as evidence. Under Section 149 of the Maharashtra Land Revenue Code, the plaintiff

was obligated to report any such acquisition of rights to the Talathi within three months, which has not been done. The suit is also hopelessly time-barred under the Limitation Act, 1963, which prescribes a period of three years for suits seeking declarations regarding forged or invalid documents. The present suit, instituted after a lapse of more than eighteen years, is therefore *ex facie* barred by limitation.

07. The defendant No. 5 has placed reliance on the judgment of the Hon'ble Karnataka High Court in *Yallamma w/o Mallayya & Another v. State of Karnataka & Another* (W.P. Nos. 203433/2015 & 204112/2015, decided on 09.01.2020), wherein it has been held that "a party cannot claim any right or title over property on the basis of an unregistered relinquishment deed". Applying the same principle, the plaintiff's reliance on an unregistered and defective document cannot confer any right in law, and the plaint deserves to be rejected under Order VII Rule 11(a) and (d) CPC.

08. In contrast, the plaintiff refutes all the allegations and vehemently opposes the application. According to the plaintiff, the present application made by Defendant No. 5 is false, fabricated, and devoid of any legal or factual foundation, and therefore liable to be rejected in limine. The plaintiff's suit is not hit by the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908. The defendant has merely made vague and baseless averments without producing any documentary or oral evidence in support thereof. Hence, such contentions cannot be accepted. Further, there is no delay or laches on the part of the plaintiff in filing the present suit, and therefore, the claim is not barred by limitation or affected by delay in any manner whatsoever.

09. That the plaintiff has instituted the present suit seeking a declaration that the plaintiff and Defendants No. 1 to 3 are the exclusive and independent owners of the suit property as per the allotment dated 25/11/1987, and further seeks a direction to the concerned Revenue Authorities to record and mutate the names of the plaintiff and Defendants No. 1 to 3 in the 7/12 extract pertaining to the suit property, excluding the names of persons who have ceased to have any right, title, or interest in the same pursuant to the said allotment. That the present suit discloses a valid, subsisting, and enforceable cause of action and defendant No. 5 was well aware of the said distribution and the separate possession and management rights enjoyed by the plaintiff and Defendants No. 1 to 3 since the date of execution. Hence, prayed to reject the application with cost.

10. I have heard the arguments presented by both learned advocates representing the respective parties. The following points have emerged for my consideration, and my findings on these points are discussed hereinbelow.

Sr. No.	Point	Findings
1	Whether the suit is hit by the provision of Order 7 Rule 11 of the C.P.C. ?	In the Negative.
2	What order ?	As per order passed below .

REASONS

As to Points 1 & 2 :-

11. Order 7 Rule 11 deals with the provision of rejection of plaint for different causes, some of them are clause (a) where it does not disclose a

cause of action; (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so; (d) where the suit appears from the statement in the plaint to be barred by any law; (f) where the plaintiff fails comply with the provision of Rule 9.

12. Learned Advocate for the defendant No. 5 has argued that, the suit filed by the plaintiff is false, frivolous, and vexatious, having been instituted with mala fide intent to deprive Defendant No. 5 of his lawful rights in the property. It was contended that the plaint does not disclose any valid cause of action and is liable to be rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908. The plaintiff has no locus standi to file the present suit, which is neither maintainable in law nor on facts. It was further argued that Late Shri Shripati Dhanaji Alhat, was the absolute and self-acquired owner of the suit property, and he died intestate without executing any will, partition deed, or family arrangement. Therefore, all legal heirs, including Defendant No. 5, inherited the property by succession. The document relied upon by the plaintiff, alleged to be a distribution deed dated 25/12/1987, is unregistered, unnotarized, and legally invalid. It does not bear the signatures of all legal heirs, lacks witness attestation, and fails to comply with the mandatory provisions of the Registration Act, 1908.

13. It is further contended that if the document is claimed to be a will, it is void for non-compliance with statutory requirements, It is further argued that, the document is more than 26 years old and the suit filed after an inordinate delay of 18 years is hopelessly barred by limitation under the Limitation Act, 1963. It was also argued that defendant No. 5's name

already stands recorded in the 7/12 extracts of the relevant survey numbers as per heirship records, and the plaintiff's attempt to alter revenue entries based on an invalid document is wholly untenable. The application made by the plaintiff before the Upper Tehsildar for registration of the disputed document was illegal and without authority. Hence, it was argued that the plaint is devoid of cause of action, barred by limitation and law, and deserves to be rejected with exemplary costs. Counsel further prayed that Defendant No. 5 be compensated for mental harassment and unnecessary litigation caused by the plaintiff's false and frivolous claim.

14. Ld. Advocate for the plaintiff has argued that, the defendants has filed the present application only for the purpose of pro-long the matter. It is also argued that, the plaintiff is the legal owner and possessor of the suit-property. It is further submitted that, the plaintiff has specifically stated the cause of action in the plaint and as the suit is declaration and the plaintiff has complied all the provisions as contemplated in the law and lastly prayed for rejection of application.

15. Perused the plaint, the present application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908, and the documents placed on record. The present suit is instituted by the plaintiff seeking a declaration in respect of the suit property. It is the specific case of the plaintiff that on the basis of a partition deed dated 25.12.1987, the plaintiff and Defendants No. 1 to 3 had applied before the Tehsildar, Pimpri Chinchwad, on 26.10.2023 for mutation of their names in the revenue records. However, the said application came to be refused on the ground that the document relied upon was not registered.

16. The plaintiff has specifically averred in paragraph No. 13 of the plaint that the cause of action for filing the present suit arose on 26.10.2023, i.e., the date on which the Tehsildar refused to mutate their names in the revenue records. The suit came to be filed on 27.11.2023. Hence, on a plain reading of the pleadings, the cause of action has been clearly pleaded, and the institution of the suit falls well within the prescribed period of limitation under the **Limitation Act, 1963**. Therefore, prima facie, the suit cannot be held to be barred by limitation at this stage.

17. The defendant has raised an objection that the plaintiff is seeking relief in respect of an immovable property on the basis of an unregistered document dated 25.12.1987 and that the person alleged to have executed the said document expired in the year 2006. It is further contended that the present suit, having been filed after a lapse of nearly 18 years from the date of death of the executant, is barred by limitation and therefore liable to be rejected under Order VII Rule 11(d) of the Code of Civil Procedure.

18. However, it is well settled that for the purpose of considering an application under **Order VII Rule 11 CPC**, only the averments made in the plaint are to be looked into, and not the defence or written statement of the defendant. As per the pleadings, the cause of action is specifically stated to have arisen on 26.10.2023 when the mutation application was refused. The plaintiff has, therefore, shown a continuing cause of action which has arisen from the said refusal. The question of limitation is not a pure question of law in this case but a **mixed question of law and fact**, which can only be adjudicated upon after both parties have adduced evidence. Hence, at this preliminary stage, it cannot be conclusively held that the present suit is barred by limitation.

19. Furthermore, there is nothing on record to indicate, nor has the defendant shown, that the plaintiff has failed to comply with the provisions of **Order VII Rule 9 CPC** with regard to the proper institution of the suit. The plaint, on its face, discloses a valid cause of action and seeks declaratory relief based on events that occurred within the legally prescribed limitation period.

20. Thus, from all the above findings at this stage prima-face it is clear that, the plaintiff has presented the plaint specifying the cause of action and within the limitation prescribed in the law. As such, I do not found any merit in the present application as the objection raised in present application do not fit within the purview of order 07 Rule 11 of CPC. Therefore, I held finding of point No.1 in the negative and in answer to point no.2 I pass following order.

Order

[i]. Application Index title No. 106 dated 03.02.2024 under order 07 Rule 11 of CPC is hereby rejected.

[ii]. No order as to costs.

[iii]. Matter to proceed further according to law.

Date:-28/10/2025.

**(AL Amoodi A.K.)
Jt. Civil Judge, J. D. Pimpri.**