


CNR No.MHPU130012282024	Reg. Civil Suit No.218 of 2024
	Krushna Dagadu Budhe Versus. Balu Shivram Budhe & Ors.

ORDER BELOW EXH.31.
(Date : 30.07.2025)

Present application is filed by defendant nos.1, 10 and 11 for rejection of plaint as per Order VII Rule 11 of the Code of Civil Procedure. The plaintiff resisted the application by filing say.

2] It has been contended on behalf of defendants that, plaintiff admits that, defendant nos.2 and 3 sold property to defendant nos.1 and 11 on 27.07.2012. The sale deed came to be registered at Sub Register Office, Purandar vide document no.4179/2012. At the time of sale-deed plaintiff was present in the office. The plaintiff after obtaining legal advice, time to time filed applications against defendant nos.1 and 11. Defendant no.1 has filed criminal complaint against defendant nos.2 and 3 and his sisters sold property mentioned in the document to Dubare. However, plaintiff has not filed evidence in support of these contentions. The suit ought to have been filed within 3 years and accordingly bars as per Article 54 and 58 of the Limitation Act. The plaintiff has filed this suit after lapse of 12 years. Plaintiff despite having knowledge of law given false reason. Hence, defendants prayed for rejection of the plaint.

3] On the other hand, plaintiff filed his say at Exh.40 and resisted the application. According to plaintiff, the

application is false one and not in accordance with legal provisions. Defendants have not taken into consideration that appeal was pending before Hon'ble District Court, Pune till 2022. The present application is filed with intent to harass the plaintiff and prolong the hearing of Exh.5. The defendants are required to prove that Spl.C.S No.111/2023 is pending before Civil Judge, Senior Division, Pune. Although the Spl.C.S. No.111/2023 is pending in the Court, the reliefs claimed in the present suit and that suit are different. There is no bar to the present suit due to pendency of Spl.C.S. No.111/2023. Hence, prayed to reject the application.

4] Perused the application, say and plaint. It appears that defendants appeared and filed their W.S. It is settled law that for deciding an application under Order VII Rule 11 the averments made in the plaint are to be taken in to consideration. The contention and submission of the defendants that the suit is barred by limitation. On perusal of plaint it appears that plaintiff has sought declaration and perpetual injunction. It is contended by the plaintiff that, though decree passed in RCS No.97/2003 declared $1/3^{\text{rd}}$ share each in the suit property of plaintiff and defendant nos.2 and 3, same is not executed till today. But, during the pendency of that suit defendant nos.2 and 3 sold their undivided share out of Gat No.656 adm area. 1H. 79.32R, Gat No.442 adm. area 22.66R and Gat No.450 adm. area 22.66R to defendant no.1 on 20.04.2012 by registered sale-deed. The plaintiff has taken objection before Tahsildar, Purandar to effect the entries. Then the plaintiff challenged the order passed by

Tahsildar, Purandar before Sub Divisional Officer, Daund-Purandar and got canceled entries effected in the name of defendant nos.1 and 11 by M.E. No.7424. Therefore, defendants not yet get the separate possession of their share. The appeal filed by the plaintiff against decree passed in RCS No.97/2003 is dismissed on 27.06.2017. Till today the decree holders in RCS No.97/2003 have not filed execution petition. The plaintiff is in possession of suit property. However, defendant no.1 on the basis of alleged sale-deed and order passed by revenue officers, illegally and forcibly causing obstruction to plaintiff's peaceful possession over suit property. On 15.08.2024, defendants tried to enter in the suit property and caused obstruction and threatened that they will take forcible possession of the suit property.

5] The defendants have taken the plea of limitation on the ground that sale-deed came to be registered on 27.07.2012. Therefore, suit ought to have been filed within three years as per Article 54 and 58 of the Limitation Act. Article 54 speaks about the limitation for specific performance of contract. The suit for specific performance of contract has to be filed within three years from the date fixed for the performance or if no such date is fixed, when the plaintiff has noticed that performance is refused. The present suit is filed for declaration and injunction and not for specific performance of contract. Therefore, limitation prescribed in Article 54 of the Limitation Act is not applicable to the present case.

6] Further, the another Article on which defendants are

relied is Article 58 of the Limitation Act. Article 58 of the Limitation Act relates with to obtain any declaration. The prescribed limitation is three years and its starts from when the right to sue first accrues. In the present suit the plaintiff sought declaration that the defendants have not got the possession of suit property and injunction that defendant be restrained from causing plaintiff's possession over suit property. The plaintiff has specifically averred that though the defendant nos.2 and 3 sold their undivided share to defendant nos.1 and 11, they were not in separate possession of their respective shares and accordingly defendant nos.1 and 11 did not get the separate possession. Further, though the shares of plaintiff, defendant nos.2 and 3 have been declared in RCS No.97/2003 the decree is not executed till today. The cause of action shows that on 15.08.2024 defendants tried to take possession of the suit property forcibly and caused obstruction. The plaintiff claiming possession over the suit property and on the basis of said possession, he claiming the reliefs. The plaintiff denying the possession of defendants on the basis of sale-deed. The plaintiff neither challenged nor sought cancellation of sale-deed dtd. 20.04.2012. The plaintiff nowhere claiming any relief against sale-deed. Plaintiff seeking the reliefs on the basis of possession only. Therefore, whether the plaintiff is in possession of the suit property or not can be decided at the conclusion of trial and not at this stage. Therefore, the limitation prescribed in Article 58 is not applicable to the present claim of the plaintiff. There are no other circumstances appears from the averments of pleading that suit is barred by limitation. I have gone through the

authority cited by the defendants, however the facts of the present case are totally different. Therefore, the authority cited by the defendants is not applicable to the present case.

7] Considering the above discussion, the objection taken by the defendants is not tenable and application deserves to be rejected as devoid of merit. Hence, I proceed to pass the following order :

ORDER

The application at Exh.31 is rejected.

Date : 30/07/2025.
Place : Saswad.

[Tukaram P. Mote]
Jt. Civil Judge, Junior Division,
Saswad, Dist. Pune.

CERTIFICATE

I affirm that, the contents of this P.D.F file of order are same as per the original order.

Name of Stenographer	:: Santosh K. Panchal, Stenographer (Grade - III),
Name of the Court	:: Shri. T. P. Mote, Jt. C.J.J.D. & J.M.F.C., Saswad, Dist. Pune
Date of Order	:: 30.07.2025
Order signed by P.O. on	:: 30.07.2025
Order uploaded on	:: 01.08.2025