

MHPU180017612013



R.C.S. No. 101/2013

Vasantrao

Vs.

Namdeo and Ors.

ORDER BELOW EXH.21.

(Passed On 31/01/2026)

The present application is filed by defendant No. 1 under Order VII Rule 11 of the Civil Procedure Code on the grounds that the plaintiff has not properly valued the suit and failed to pay the requisite court fee, and the suit is barred by limitation. Defendant No. 1 respectfully prays that the Court reject the present plaint in accordance with Order VII Rule 11(b), (c) and (d) of the Civil Procedure Code. It is the contention of defendant No. 1 that the plaintiff has challenged the sale deed, which is valued at Rs. 10,65,000 and Rs.60,00,000/- in the present suit and has sought its cancellation. However, the plaintiff has not correctly valued the suit nor has the required court fee been paid in relation to the prayer for cancellation. Consequently, the suit is liable to be rejected on these grounds. Furthermore, the cause of action referred to in the plaint pertains to an event dated 01/03/2007. As such, it appears that the suit is barred by the limitation period prescribed under the applicable laws and is, therefore, liable to be dismissed.

2. Conversely the plaintiff opposed the application by filing Exhibit 48. The plaintiff submits that the suit has been properly valued and the necessary court fee has been duly paid. The plaintiff further contends that the defendant has misled the Court by failing to read the plaint in its entirety, as the plaintiff is seeking only a declaration that the alleged sale deed are not

binding upon him, given that he is not a party to the suit. Accordingly, the plaintiff has paid the court fee in accordance with Section 6(iv)(j) of the Maharashtra Court Fees Act, which is deemed proper. Additionally, the objection raised by the defendant regarding limitation is untenable, as the question of limitation is one of fact, which cannot be determined at this stage. Therefore, the plaintiff respectfully requests that the present application be dismissed.

3. Despite being provided with an opportunity, both parties are absent and failed to present arguments regarding the application. Consequently, on 27/01/2026, the Court passed an order and adjourned the matter, reserving the application for a decision on merits. On perusal of the application and the record, it is evident that the present suit has been filed for a declaration and injunction. It is a settled principle of law that, while considering an application under Order VII Rule 11 of the Civil Procedure Code, the Court is restricted to examining the plaint and should not go into the defenses raised by the defendant.

4. It appears that the plaintiff is seeking a declaration and injunction in respect of the property and the sale deeds mentioned in the plaint, which are registered under numbers 1023/2007 and 2913/2012. The plaintiff contends that defendant No. 2 obtained these sale deeds from defendant No. 3, and subsequently, defendant No. 2 executed the sale deeds in favor of defendant No. 1. The plaintiff further asserts that they are not a party to these transactions and, as such seeks a declaration that these sale deeds are not binding upon them. It is a well-established principle of law

that a person who is not a party to a sale deed or any other instrument is not required to seek the cancellation of that instrument, but may instead seek a declaration that the instrument is not binding upon them. Such a declaration would suffice to resolve the plaintiff's claim in the present suit. Therefore, since the plaintiff is not a party to the sale deeds in question, there is no necessity for them to seek the cancellation of these instruments. The plaintiff has sought only a declaration in respect of the said instruments, and as such, it is not required to value the suit in accordance with the value of the sale deeds. The plaintiff has properly assessed the court fee under Section 6(iv)(j) of the Maharashtra Court Fees Act, which applies to suits for injunction and declaration. It appears that the suit has been appropriately valued, and the court fee has been correctly fixed as per the provisions of Section 6(iv)(j) of the Maharashtra Court Fees Act.

5. Secondly, the defendant has raised an objection regarding the cause of action, stating that it arose on 01/03/2007, and that the present suit was filed in 2013. Therefore, the defendant contends that the suit is barred by limitation. However, the plaintiff asserts in the plaint that he had no knowledge of the said sale deed. It is settled principle of law that question of limitation is mixed question of facts and law. Therefore, at preliminary stage, without a trial it would not just to decide the question of limitation. In conclusion, this Court finds that the objections raised by the defendant in the application for rejection of the plaint are not sustainable and must be rejected. There is no any issue arises to frame as preliminary issue. Thus, I pass the following order.

ORDER

The application below Exhibit 21 is hereby rejected with costs.

Daund.
Dt.31/01/2026.

(A. S. Shaikh)
4th Jt. Civil Judge (Jr.Dn.),
Daund.

CERTIFICATE

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

Name of the Steno	:- Deepak A. Merukar, Grade-3
Court / Panel	:- A. S. Shaikh 4 th Jt. C.J.J.D. & Judicial Magistrate First Class (Court No. 4) Daund.
Order / Judgment date	:- 31/01/2026.
Order / Judgment singed by	:- 31/01/2026.
the Presiding Officer on	
Order/ Judgment uploaded on	:- 04/02/2026.