MHRG140009682021

ORDER BELOW EXH-49

1. This order shall dispose of the application filed by Defendant Nos. 2/2, 2/3, 2/4-a, 2/5, 2/6, and 2/7 at Exhibit-49, seeking rejection of the plaint under Order VII Rule 11 (a), (b), and (d) of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC').

2. The Applicants/Defendants contend that the suit filed by the Plaintiffs is vexatious, barred by limitation, lacks a legitimate cause of action, and has been grossly undervalued with insufficient court fees. The principal assertions of the Applicants are as follows:
a) Cause of Action: The Applicants argue that the plaint does not disclose any real, valid, or subsisting cause of action. The statements in Paragraph 10 of the plaint regarding the cause of action are vague, ambiguous, and legally unsustainable.
b) Valuation and Court Fees: The Plaintiffs have challenged Registered Sale Deeds bearing registration Nos. 2282/2019 and 2597/2019, along with a Sathekarar (Agreement to Sell). However, they have paid a nominal court fee of Rs. 400/- by valuing the suit at Rs. 1,000/-. The Applicants assert that as the Plaintiffs are seeking declarations regarding these registered instruments, they are legally

bound to value the suit based on the consideration amounts stated in the instruments, in accordance with Section 6(ha) and (j) of the Maharashtra Court Fees Act, 1959. Therefore, the suit is undervalued and undervalued court fees have been paid.

c) Limitation: The Applicants point out that the suit properties were mutated in the name of the defendants' predecessors pursuant to a family partition vide Mutation Entry No. 1271, which was certified as far back as 19/01/1973. Other successive mutation entries, namely Mutation Entry Nos. 1620, 1667, 1687, 1795, 1851, 1930, and 2384, were certified in the years 1992, 1995, 2001, 2007, 2009, and 2019 respectively. The Applicants allege that the Plaintiffs had active and constructive knowledge of these entries. Specifically, on 25/08/2011 and 14/10/2011, Plaintiff No. 1 and his deceased brother Sadashiv filed objection applications before the Talathi and Tahsildar of Uran regarding Survey No. 78, Hissa No. 2/A and 2/B. They also executed an affidavit on a Rs. 100/- stamp paper before the Executive Magistrate, Uran, on 23/08/2011, acknowledging their knowledge of the old 7/12 extracts. Furthermore, the RTS appeals filed by the Plaintiffs before the Sub-Divisional Officer, Panvel (RTS Appeal No. 253/2019) were dismissed on 16/12/2019, and their second appeal before the Additional Collector, Raigad-Alibag (Appeal No. 28/2020) was dismissed on 26/10/2021. Their revision before the Additional Commissioner, Konkan Division, was also rejected on 17/02/2023. Thus, the Applicants argue that the dispute arose in 2011, and filing a suit for declaration in 2021, after a delay of nearly 10 years, is patently barred by the 3-year limitation period prescribed under

Article 58 of the Limitation Act, 1963.

3. The Plaintiffs have strongly resisted the application vide their say at Exhibit-54 on the following grounds:

a) Denying the allegations, the Plaintiffs contend that the application has been filed with the sole intent of delaying the adjudication of the temporary injunction application.

b) Regarding Court Fees, the Plaintiffs submit that they are not parties to the disputed Sale Deeds (Nos. 2282/2019 and 2597/2019) nor to the Sathekarar. They have only sought a declaration that these deeds are not binding on their shares. Therefore, they have properly valued the suit under Section 6(iv)(d) of the Maharashtra Court Fees Act and paid the requisite court fee. They have also expressed willingness to pay additional court fees if directed by the Court.

c) Regarding Cause of Action and Limitation, the Plaintiffs assert that they came to know about the fraudulent and unauthorized mutation of the defendants' names on 28/10/2018, when they obtained the 7/12 extracts. Thereafter, they pursued RTS proceedings. The defendants initiated settlement talks but eventually backed out and flatly refused to restore the property on 25/08/2021, which gave rise to the cause of action. The suit was filed on 13/10/2021, which is well within three years from the date of knowledge.

d) The Plaintiffs have cited the legal position that the question of limitation in the present case is a mixed question of law and fact and cannot be decided at this preliminary stage without a full-scale trial.

4. It is a well-settled principle of civil jurisprudence that while considering an application for rejection of a plaint under Order VII Rule 11 of the CPC, the Court must confine its attention strictly to the averments made in the plaint and the documents annexed therewith. The defense set up by the defendants in their written statement or in the application for rejection cannot be taken into consideration. On a bare reading of the plaint, the Plaintiffs have claimed that the suit properties are ancestral and joint family properties. They have specifically averred that the defendants, in collusion with revenue authorities, carried out illegal mutations to exclude the Plaintiffs' names. They have also asserted that they discovered this fraud on 28/10/2018 and that the defendants refused to resolve the matter on 25/08/2021. For the purpose of Order VII Rule 11(a), the Court has to see whether a cause of action is disclosed, not whether the cause of action is true or will ultimately succeed. Since the plaint clearly outlines a dispute regarding ancestral rights, unauthorized mutations, and contested transfers of properties, it cannot be held that the plaint does not disclose a cause of action.

5. The Applicants argue that the suit has been undervalued because the registered sale deeds have not been valued according to the consideration amounts. Conversely, the Plaintiffs contend that they are not executants or parties to those sale deeds and therefore seek a declaration of non-bindingness rather than cancellation. The law under Order VII Rule 11(b) mandates that if the Court finds a suit

to be undervalued, it must first determine the correct valuation, direct the plaintiff to correct the valuation, and grant a reasonable timeframe to supply the requisite court fees. Only upon the plaintiff's failure to comply with such a judicial directive can the plaint be rejected. A plaint cannot be rejected outright at this stage without first giving the Plaintiffs an opportunity to cure the defect. Moreover, the Plaintiffs have expressed their readiness to pay additional court fees if this Court makes such a determination during the framing of issues. Therefore, the plaint is not liable for rejection under Order VII Rule 11(b) at this stage.

6. The Applicants argue that the dispute arose in 2011, making the 2021 suit barred by limitation. However, the Plaintiffs have categorically stated in Paragraphs 4 and 10 of the plaint that they gained knowledge of the adverse entries only on 28/10/2018. They filed the suit on 13/10/2021, which is within the three-year period under Article 58 of the Limitation Act, 1963. The Applicants' reliance on the 2011 revenue applications and the 2011 affidavit is a matter of defense. The question of whether the Plaintiffs had actual or constructive knowledge of the mutation entries in 2011 or 2018 is a disputed question of fact. It is a settled position of law that when the issue of limitation is a mixed question of fact and law, it cannot be decided at the threshold under Order VII Rule 11(d) of the CPC. The parties must be given an opportunity to lead evidence on the date of knowledge. Consequently, the plaint cannot be rejected as barred by limitation at this preliminary stage. In view of the above discussion

this application filed by the Defendants/Applicants under Order VII Rule 11 of the CPC lacks merit and is liable to be rejected. Hence, the following order is passed:

<u>ORDER</u>

1. This Application at Exhibit-49 filed by Defendant Nos. 2/2, 2/3, 2/4-a, 2/5, 2/6, and 2/7 under Order VII Rule 11 of the CPC is hereby rejected.

2. The issues regarding the bar of limitation and the sufficiency of court fees shall be framed along with the other issues on merits and decided during the trial.

3. Costs of this application shall be costs in the cause.

SANTOSH PUNDLIKRAO WANKHADE
Digitally signed by SANTOSH PUNDLIKRAO WANKHADE
Date: 2026.07.24 17:46:52 +0530

Uran S. P. Wankhade
Date – 24.07.2026 (Civil Judge J. D. Uran)