MHRG140005932011

<u>ORDER BELOW EXHIBIT- 83</u>

1. This is an application filed by Defendant No. 13 (Exhibit 83) under Order VII Rule 11 (a), (d), and (e) of the Code of Civil Procedure, 1908 (for short, 'CPC'), seeking rejection of the plaint. The Plaintiffs have filed their detailed say/reply at Exhibit 90, strongly objecting to the application. I have heard the arguments advanced by the Ld. Counsel for Defendant No. 13 and the Plaintiffs. The Ld. Counsel for Defendant Nos. 1 to 3 has supported the contentions of Defendant No. 13.

2. It is the case of Defendant No. 13 that the present suit for declaration, partition, and perpetual injunction is liable to be rejected as it is barred by the provisions of Order VII Rule 11 of the CPC. The primary grounds raised are threefold. Firstly, it is contended that the plaint does not disclose a clear and reasonable cause of action. Secondly, the suit is ex-facie barred by the law of limitation. Defendant No. 13 points out that in paragraph 3 of the plaint, the Plaintiffs admit that the suit properties were purchased by Venubai Jagannath Keni (Defendant No. 2) in the year 1956. As the Plaintiffs had knowledge of this transaction since 1956 and raised no objection for 55 years, the suit

filed after such an inordinate delay is hopelessly time-barred and filed with a mala fide intention to harass the Defendants. Thirdly, the suit is undervalued, and insufficient court fee is paid. Defendant No. 13 contends that out of the suit property bearing Survey No. 218, Hissa No. 4A/1 at Mouje Chirner, he purchased an area of 2 Gunthas from the original owner, Venubai Keni, for valuable consideration vide a registered Sale Deed No. 560 dated 23/02/1999. He has constructed a residential house thereon, which is assigned Gram Panchayat Property No. 1144. The capital value of the said house today is Rs. 33,82,925/-. Since the Plaintiffs have failed to value the suit on the basis of this capital value and have not paid the requisite court fee stamp, the plaint ought to be rejected.

3. Per contra, the Plaintiffs in their Say (Exhibit 90) submit that the application is misconceived and untenable in law. It is submitted that the suit is filed in respect of the ancestral joint Hindu family properties originating from late Shivram Mahadu Keni. Regarding the cause of action, the Plaintiffs rely on paragraph 6 of the plaint, which explicitly states that the cause of action first arose when the Defendants filed Regular Civil Suit No. 139/2008, and subsequently on 20/03/2009 and 27/05/2011 when the Defendants attempted to sell House No. 265, compelling the Plaintiffs to file objections before the Gram Panchayat. Regarding valuation, the Plaintiffs contend that the suit properties are agricultural lands, and the suit is for declaration and partition. The

valuation is correctly made under the relevant provisions of the Maharashtra Court Fees Act based on the land revenue assessment. The Plaintiffs have categorically clarified that Gram Panchayat Property No. 1144 (belonging to Defendant No. 13) is not the subject matter of the present suit. Defendant No. 13 was not initially a party to the suit and was impleaded later upon his own application. The Plaintiffs have not claimed any relief in respect of House No. 1144, and therefore, they are not liable to pay court fees on its valuation of Rs. 33,82,925/-. Regarding limitation, the Plaintiffs submit that as Defendant No. 13's specific property is not the subject matter of their claim, and the suit is essentially against the co-parceners for partition based on recent threats of alienation, the suit is well within limitation.

4. Before delving into the merits of the application, it is a well-settled principle of law, as enunciated by the Hon'ble Supreme Court in ***Dahiben vs. Arvindbhai Kalyanji Bhanusali (2020) 7 SCC 366***, that while considering an application under Order VII Rule 11 of the CPC, the Court must strictly confine itself to the averments made in the plaint. The pleas taken by the defendants in their written statement or any independent documents produced by the defendants (such as the Sale Deed of Defendant No. 13) cannot be looked into at this stage. The plaint must be read as a whole to find out whether it discloses a cause of action or whether the suit is barred by any law.

5. Under Order VII Rule 11(a) of CPC, a plaint can be rejected if it does not disclose a cause of action. The cause of action is a bundle of facts which are required to be proved for obtaining relief. Upon a plain reading of the amended plaint, specifically paragraphs 4, 5, and 6, the Plaintiffs have clearly averred that the properties, though standing in the names of Venubai and Chandrabhaga since 1956, were kept so for convenience but remained joint family properties. They have further pleaded that their rights were clouded when the Defendants filed RCS No. 139/2008 and when the Defendants attempted to alienate House No. 265 in the years 2009 and 2011, prompting the Plaintiffs to file objections. These averments clearly disclose a valid, triable cause of action. The veracity of these averments is a matter of trial. Hence, the plaint cannot be rejected under Order VII Rule 11(a).

6. Defendant No. 13 invokes Order VII Rule 11(d) claiming the suit is barred by limitation as the transaction took place in 1956. However, it is a crystallized rule of law, as held by the Hon'ble Supreme Court in ***Chhotanben vs. Kiritbhai Jalkrushnabhai Thakkar (2018) 6 SCC 422***, that limitation is a mixed question of law and fact. A plaint can be rejected under Rule 11(d) only if the bar of limitation is apparent purely from the averments in the plaint. In the present case, the Plaintiffs have pleaded that the 1956 arrangement was internal and the property continued to be joint. They have specifically pleaded that the

cause of action arose in 2008, 2009, and 2011 when their rights were actively threatened. Therefore, on a demurrer, it cannot be said that the suit is ex-facie time-barred. The issue of limitation in this partition suit will require evidence to establish ouster or exclusion, and thus, rejection on this ground is impermissible at this threshold stage.

7. Defendant No. 13 contends that the suit is undervalued because his house (No. 1144), valued at over Rs. 33 Lakhs, is situated on 2 Gunthas of Survey No. 218/4A/1. However, the plaintiff is the dominus litis. A perusal of the plaint, specifically paragraph 1(A) and 1(B), shows that the Plaintiffs are seeking partition of Survey No. 218/4A/1 (agricultural land) and House No. 265. The Plaintiffs have categorically stated in their reply (Exhibit 90) that House No. 1144 is not the subject matter of the suit and no relief is claimed against it. Under the Maharashtra Court Fees Act, 1959, Section 6(iv)(d) and the provisions related to agricultural land, the valuation is to be made on the basis of land revenue assessment (200 times the assessment) and the specific notional value of the properties claimed. Since the Plaintiffs have not sought any relief regarding House No. 1144, they cannot be compelled to value the suit on its capital value. Furthermore, even if there was a deficit in court fees, the Court is mandated to first grant time to the Plaintiffs to rectify the deficit under Order VII Rule 11(b) and (c), rather than dismissing the plaint outright. Consequently, this ground also fails.

8. In view of the detailed discussion above, none of the clauses of Order VII Rule 11 of the CPC are attracted to the present plaint. The objections raised by Defendant No. 13 regarding his title, limitation, and the true nature of the 1956 transaction are matters of defense which require full-fledged adjudication through leading of evidence during the trial. Therefore, the application is devoid of merits and deserves to be rejected. Hence, I proceed to pass following order;

<u>ORDER</u>

1. This Application filed by Defendant No. 13 at Exhibit - 83 under Order VII Rule 11 of the Code of Civil Procedure is hereby rejected.

2. The costs of this application shall be the costs in the cause.

SANTOSH PUNDLIKRAO WANKHADE
Digitally signed by SANTOSH PUNDLIKRAO WANKHADE
Date: 2026.04.22 17:30:44 +0530

Uran, S. P. Wankhade
Date – 22.04.2026 Civil Judge J. D. Uran