

MHRG140020542024



Order below Exhibit 47

in

RCS No. 149/2024

**Tulsa Hasuram Tandel @ Tulsa Bhiva Thakur ----- Plaintiff**

**Vs.**

**Kiran Raghunath Thakur and others ----- Defendants**

**(Passed on 10.03.2026)**

1. This is an application filed by defendant no. 1 to 5 to reject the plaint under Order VII Rule 11 of the Code of Civil Procedure Code (CPC) on the point that the suit is barred by law and the suit is barred by limitation.

**Plaintiff's case:**

2. The plaintiff has submitted that the suit is not barred by limitation as the right to sue begins from the date on which the plaintiff gains knowledge. Hence the application is liable to be rejected.

3. Considering all the submissions of both the parties, following points arise for my determination and I record my findings with the reasons stated below:

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1]	Whether the suit is barred by law?	No
2]	Whether the suit is liable to be rejected on the point of limitation?	No
3]	What Order ?	Application is rejected.

**:: REASONS ::**

**Point No. 1 and 2:- Both the points, being inter-related, are being dealt together**

4. Heard the Ld. advocate for plaintiff. Defendant No. 1 to 5 despite several opportunities did not argue the application.

**Application of the Defendant No. 1 to 5:**

5. As per the genealogy mentioned, the plaintiff is shown as an heir of the deceased Bhiva Bombya Thakur, and according to the genealogy submitted by the defendants, there are no other heirs.

6. Under the Limitation Act, the limitation period for claiming ownership rights over private property is 12 years. Approximately 67 years have passed since the death of Bhiva Bombya Thakur. After the lapse of 12 years from the death, the names of the heirs were entered in the record in the year 1970. From 1970 to 2024, that is, for at least 56 years, the plaintiff has never raised any claim or asserted any inheritance rights or ownership over the property.

7. In Paragraph No. 10 of the plaint, the plaintiff has made false allegations against a government employee (Talathi) without any concrete evidence. Even though the heirs' names were entered in the record around 1974, and the year 2025 is currently ongoing, more than 51 years have passed since the entry of the names, yet no person with such a name has ever contacted the defendants during this entire period. Late Raghunath Bhiva Thakur died on 15.09.2001, and thereafter, the names of his legal heirs were recorded through Mutation Entry No. 5527 dated 02.08.2006.
  
8. The present suit filed by the plaintiff, under an incorrect provision of law is barred under the provisions of the CPC; therefore, the said suit deserves to be rejected.

**Arguments of the plaintiff:**

9. Ld. advocate for the plaintiff argued that the application has been filed by Defendant No. 1 to 5 with the intention of delaying the proceedings of the suit. The documents filed along with the suit were received by the plaintiff in the year 2024. The suit is for partition and injunction and declaration.
  
10. The plaintiff obtained information regarding Mutation Entry No. 3774 when she obtained mutation extracts relating to the suit property. Therefore, the present suit has been filed within the prescribed limitation period. The plaintiff has nowhere stated in the plaint that she had knowledge about Mutation Entry No.

3774 in the year 1970. Hence, the application at Exhibit 47 filed by Defendant No. 1 to 5 deserves to be dismissed with costs.

11. The plaintiff further states that the cause of action for filing the present suit has been clearly mentioned in Paragraph No. 11 of the plaint. The defendants have also received the notice dated 28.08.2024 sent by the plaintiff's advocate; however, they did not give any reply to the same. The defendants have not denied their relationship with the plaintiff, and therefore it is necessary to examine the evidence in detail to determine why the defendants have denied the plaintiff's rights and to establish the plaintiff's rightful share in the suit property. Therefore, the application at Exhibit 47 filed by Defendant No. 1 to 5 deserves to be dismissed with costs.

12. The Ld advocate for the plaintiff has relied on the following case laws:

- i. Deepali Himmat Meherwal and anr. v. shaikh Nazir Mohammad Nasir and others, Civil Rev. Appln no. 244 of 2017 where the Hon'ble High Court of Aurangabad, has observed that *Civil Procedure Code, O. 7, R. 11, S. 47 and Limitation Act (36 of 1963), S. 5- Rejection of plaint - Basis that suit is barred by limitation, res judicata and provisions of law - Statement in plaint shows that suit is not barred by law - Limitation is issue of fact and law - Issue of res judicata also need not be considered at stage of Order 7, Rule 11 application - Disputed questions are involved in suit - Said questions cannot be*

*decided at stage of considering application under Order 7, Rule 11 - Plaint not liable to be rejected on this ground., 7. Mr. S. G. Jadhavar, the learned counsel for the respondent Nos. 1 to 4 points out that, plaint can be rejected under Order VII, Rule 11 of the Code of Civil Procedure, only on the basis of a statement in the plaint and not by reference to the defence of the defendants. He submits that, upon a meaningful but entire reading of the plaint, it is quite clear that the same not only discloses cause of action but further, plaint cannot be said to be barred by any provisions of law. Mr. Jadhavar submits that issue of limitation at the highest is the mixed issue of law and facts., 12. The Trial Judge, upon examination of the plaint, has rightly held that the issue of limitation in this case, at the highest, is a mixed issue of law and facts. No doubt, the issue of limitation has to be taken up for consideration by the Court, whether the same is raised as defence or not. However, the question is whether in the facts of the present case, and that too, on the basis of some statement in the plaint, it can be said that the Suit is barred by limitation. The answer at this stage, will have to be in the negative. Evidence will be necessary for determination of the issue of limitation in the facts and circumstances of this case, The challenge in the plaint is not merely to the exercise of powers of the Collector under the provisions of Maharashtra Land Revenue Code, the challenge is basically to the alleged act of deprivation of appropriate share, which respondents No. 1 to 4 claim to have acquired from Mrs. Shakuntalabai Patole. The learned Counsel for*

*respondents No. 1 to 4 states that respondents No. 1 to 4 have not even been allotted the share, which was purchased by them and entitled to get in terms of the decree. This contention is no doubt seriously disputed by the learned Counsel for the applicants. But again, this is not the stage to go into such disputed issues*

- ii. *Salim D. Agboatwala and others v. Shamalji Oddhavji Thakkar and others Civil Appeal No. 5641 of 2021, the Hon'ble Supreme Court of India, has observed that, insofar as the rejection of the plaint on the ground of limitation is concerned, it is needless to emphasise that limitation is a mixed question of fact and law. It is the case of the appellant-plaintiffs that only after making inspection of the records in connection with the suit land available in the office of Defendant 3 (Court Receiver) that they came across the correspondence and documents relating to the transactions and that the proceedings before ALT were collusive, fraudulent and null and void. The appellant-plaintiffs have even questioned the authority of the Court Receiver to represent them in the tenancy proceedings.*

**Reasoning:**

13. The suit can be rejected under Order VII Rule 11 of the CPC only on the grounds if the suit does not disclose cause of action, relief claimed is undervalued and the plaintiff, on being required by the Court to correct the valuation, failed to do so within the time prescribed or if insufficiently stamped, fails to supply requisite

stamp paper within the prescribed time on the plaint, or it is barred by law.

14.It is settled that while deciding an application under Order VII Rule 11 of the CPC, one has to consider only the plaint and documents filed along with it.

15.It is settled that when there is question of limitation, it must be noted that it is a mixed question of fact and law. The contention of the defendants that the suit is barred by limitation, needs to be adjudicated when parties lead evidence.

16.The Plaintiff has mentioned in the suit that the plaintiff obtained information regarding Mutation Entry No. 3774 when she obtained mutation extracts relating to the suit property. Therefore, the present suit has been filed within the prescribed limitation period. The plaintiff has nowhere stated in the plaint that she had knowledge about Mutation Entry No. 3774 in the year 1970.

17.The defendants have submitted that the suit is barred by law. But there is no provision cited by them to substantiate their contention that the suit is barred by law. Mere statement would not suffice to state that the suit is barred by law.

18.In view of the above discussion, provisions of law and facts of the case, I answer **point no.1 and 2 accordingly.**

**Point No.3:**

19.Considering the above legal position, circumstances and in answer to point No. 3, I proceed to pass the following order:

**:: Order ::**

1. The application at Exhibit 47 is rejected.
2. No order as to costs

Sd/-

Place: Uran  
Date :10.03.2026

(Ms. G. K. R. Tandon)  
2<sup>nd</sup> Jt Civil Judge, J.D.,  
Uran