

MHRG140022372023



R.C.S./175/2023

Krushna Ganpat Koli Vs. Nirmala Gopinath Patil

COMMON ORDER BELOW EXH-63 AND EXH-88

1. Application Exh-63 is filed by Defendant Nos.1 and 7 under Order VII Rule 11(a), (b) and (d) of the Code of Civil Procedure seeking rejection of the plaint. It is contended that the suit is false, frivolous and does not disclose any cause of action; that the Will dated 25.09.1997 is a registered document acted upon since 1997 and mutation entry No.1824 was approved in the year 2002; that the suit filed after about twenty-six years is barred by limitation; that earlier proceedings before the Sub-Divisional Officer, Panvel and pendency of Regular Civil Suit No.105/2017 and Special Civil Suit No.69/2020 operate as res judicata; that the suit property is not properly described as required under Order VII Rule 3 CPC; that the suit is undervalued and insufficiently stamped; and that the plaintiff has suppressed material facts, joined unnecessary parties and

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has no locus standi.

2. Application Exh-88 is filed by Defendant Nos.10 and 11 under Order VII Rule 11 CPC contending that the market value of Suit Property-B is approximately Rs.1,98,89,120/- as per valuation obtained in the year 2025 and therefore this Court lacks pecuniary jurisdiction; that even the value of the 1/6th share claimed by the plaintiff exceeds the jurisdiction of this Court; that the challenge to the Will dated 25.09.1997 and the sale deeds executed in the years 2010, 2015 and 2016 is barred by limitation; and that the allegations of fraud are vague and bald, particularly in view of the registered Will being supported by attesting witnesses and a medical certificate.

3. The plaintiff has filed replies to both the applications. In reply to Exh-63, the plaintiff contends that the suit is for partition of ancestral properties and cancellation of a forged and bogus Will; that limitation commences from the date of knowledge which arose only in September 2023; that proceedings before revenue authorities relate only to mutation entries and cannot operate as res judicata; and that proper valuation has been made and requisite court fees have been paid. In reply to Exh-88, it is contended that valuation based on documents of the year 2025 is irrelevant; that limitation and fraud are mixed questions of law and fact; and that the plaint contains detailed pleadings regarding impersonation and forgery.

4. Heard learned counsel for the parties at length and perused the pleadings and record. The present suit is instituted by the plaintiff seeking declaration of his undivided share in the suit properties described as Suit Property-A and Suit Property-B, partition and separate possession thereof, cancellation of the registered Will dated 25.09.1997 allegedly executed by Late Govind Barku Patil in favour of Defendant No.1, and a further declaration that the subsequent sale deeds dated 08.02.2010, 18.04.2015 and 19.03.2016 are null, void and not binding upon the plaintiff.

5. The scope of enquiry under Order VII Rule 11 CPC is well settled. While considering such application, the Court is required to examine only the averments made in the plaint, read as a whole, and the documents relied upon by the plaintiff. The defence set up by the defendants, howsoever strong, cannot be considered at this stage. Rejection of a plaint is a drastic power and can be exercised only when the defect is apparent on the face of the plaint itself.

6. The defendants have relied upon the judgment of the Hon'ble Supreme Court in ***Ramisetty Venkatanna vs. Nasyam Ramal Saheb [Civil Appeal No-2717 of 2023 decided on 28.04.2023]*** to contend that a plaint barred by limitation must be rejected. However, the said judgment clearly reiterates that such bar must be apparent from the plaint itself. In

the present case, the plaint specifically pleads the date of knowledge of the Will and subsequent sale deeds and alleges impersonation and fraud. Hence, the ratio of the said judgment does not apply.

7. Reliance is also placed on ***Dahiben vs. Arvinbhai Kalyanji Bhanusali [AIR Online 2020 SC 634]***. In that case, the plaint itself admitted dates which conclusively showed that the suit was barred by limitation. In the present case, the plaint does not admit any such fatal dates. On the contrary, it asserts that knowledge of the impugned documents was acquired only in September 2023. Therefore, the said judgment is distinguishable on facts.

8. Defendant Nos.10 and 11 have relied upon ***Ms. Aninha D'Costa vs. Mrs. Parvatibai M. Thakur [AIR 1966 Bom 113]*** to contend that valuation must be determined on market value. The said judgment holds that valuation is to be examined on the basis of plaint averments. In the present case, the plaintiff has explained valuation in paragraph 15 of the plaint and paid court fees accordingly. Whether market value is required to be adopted or whether additional court fees are payable is a matter for adjudication and cannot result in rejection of the plaint at the threshold.

9. Reliance on ***M/s Ispat Industries Ltd. vs. Commissioner of***

Customs [AIR Online 2006 SC 69] to raise the issue of jurisdiction is also misplaced at this stage, as pecuniary jurisdiction in the present case depends upon disputed questions of valuation and share, which cannot be conclusively determined under Order VII Rule 11 CPC.

10. The defendants have further relied upon **C.S. Ramaswamy vs. V.K. Senthil [2022 LiveLaw (SC) 822]** to contend that allegations of fraud must be pleaded with particulars. A perusal of the plaint shows detailed pleadings regarding impersonation of the testator, his physical and mental condition, absence of probate and subsequent alienations. Whether such allegations are ultimately proved or not is a matter for trial.

11. Reliance on **Prem Singh vs. Birbal [AIR 2006 SC 3608]** is also premature. The plaintiff has pleaded that the Will is forged and void ab initio. Whether the document is void or voidable is a mixed question of law and fact requiring evidence.

12. The judgment in **Karnataka Power Corporation Ltd. vs. Thangappan [(2006) 4 SCC 322]** relates to delay and laches in writ proceedings and has limited application to civil suits governed by the Limitation Act. In any event, the plaintiff has pleaded explanation for delay.

13. The plaintiff has relied upon **Anjanabai Ratan Bahirat vs.**

Bajirao Baban Talekar [Writ Petition No-7879 of 2015 Decided on 05.03.2018], wherein it is held that questions of limitation, title and validity of documents involving disputed facts cannot be decided under Order VII Rule 11 CPC. Reliance is also placed on ***Karam Singh vs. Amarjit Singh [Arising out of SLP © Nos. 3560-3561/2023]***, wherein the Hon'ble Supreme Court reiterated that rejection of plaint is an exception and that courts should lean in favour of adjudication on merits. The principles laid down in these judgments squarely apply to the present case.

14. On a meaningful reading of the plaint, it is clear that it discloses a cause of action for partition, declaration and cancellation of documents. The bar of limitation is not apparent on the face of the plaint. The plea of res judicata is not established from the plaint averments. Issues regarding valuation, court fees and pecuniary jurisdiction require adjudication and cannot straightaway result in rejection of the plaint. The description of the suit properties by survey numbers and village details is sufficient at this stage.

15. The applications seek premature adjudication of disputed questions of fact and law, which is impermissible under Order VII Rule 11 CPC. Entertaining such pleas would amount to short-circuiting a full-fledged trial. Therefore, I proceed to pass following order;

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ORDER

1. Application Exh-63 filed by Defendant Nos.1 and 7 under Order VII Rule 11 CPC stands rejected.
2. Application Exh-88 filed by Defendant Nos.10 and 11 under Order VII Rule 11 CPC also stands rejected.
3. Costs in cause.

Date : 20.01.2026

S. P. Wankhade

Jt. Civil Judge Junior Division, Uran.