



**R.C.S. NO.103/2016**  
**ORDER BELOW EXH-44**  
**(Suresh patil v/s Shripad Patil etc.10)**  
**(CNR NO. MHSI04-000576-2016)**

This is an application filed by the defendant no.6 under Order VII Rule 11 of the Code of Civil Procedure 1908. (Hereinafter C.P.C for short)

**2.** It is submitted by defendant no.6 that, the plaintiff has filed the suit seeking a declaration of ownership and asserting that the sale deeds executed in favour of defendants Nos. 5 to 7 are not binding on them. Additionally, the plaintiff is requesting consequential relief of an injunction against the defendants. In response, the defendants have objected to the plaintiff's claim by submitting a written statement at Exh.37. The plaintiff asserts that the cause of action for this suit arose on September 25, 2016, when they attempted to inspect the suit properties. According to the plaintiff, the defendants prevented them from entering the land and threatened them, claiming ownership of the properties and denying the plaintiff access. However, the plaintiff has admitted in their plaint that the suit properties are currently in the possession of the Dabholkar family as tenants. Therefore, there is no substantial cause of action as claimed by the plaintiff, who has no legitimate concern over the suit property.

**3.** He further submitted that, the plaintiff stated in paragraphs 5 and 6 of his plaint that special R.C.S. No. 06/2008, 07/2008, and 08/2008, which correspond to R.C.S. No. 54/2012, 55/2012, and 56/2012 respectively, were filed in this court by Kashinath Dabholkar and others for the cancellation of a sale deed and for consequential relief of injunction against the

present defendants. In those suits, the ancestor of the present plaintiff filed an application to be impleaded as a party. On January 17, 2010, this application was granted, and the plaintiff's ancestor was admitted as a party in those suits. However, on July 8, 2016, the court dismissed all of the suits. The plaintiff is aware of these facts. Therefore, the present suit brought by the plaintiff is barred by limitation. Hence, he requests that the plaint be rejected.

**4.** The plaintiff has submitted his say at Exhibit 47, objecting to the application. He stated that, the suits mentioned by the defendant R.C.S. No.57/2012, 55/2012, and 56/2012, were rejected by this court. However, an appeal against that order is filed in the Hon'ble District Court, Sindhudurg, at Oros. Additionally, applications for condonation of delay, bearing numbers Civil M.A No. 60/2016, 61/2016, and 62/2016, have been filed and are currently pending. The plaintiff further noted that the aforementioned suits are not against the present plaintiff and defendants, meaning that the present suit is not barred by limitation. In those suits, the plaintiff and a co-sharer have submitted an application to be added as parties to the suit, and the litigation has been pursued in good faith. The plaintiff is claiming ownership of the suit property and, as the owner, has every right to inspect it. Therefore, the cause of action claimed by the plaintiff is both proper and legal. In conclusion, there is no merit in the defendant's application, and the plaintiff requests its rejection.

**5.** Perused the application and say.

**6.** Heard, Ld. Advocate Shri. J.S. Samant for defendant

No.6 and perused the written argument filed by the Ld. Advocate Shri. H.S. Tari for plaintiff.

**7. It is important to note that while deciding an application under Order VII Rule 11 of the Civil Procedure Code (C.P.C.), only the statements made in the plaint and the documents relied upon by the plaintiff are relevant. The court cannot consider the defence in any way at this stage.** Additionally, the cause of action mentioned in the plaint must be examined solely on the statements in the plaint and the supporting documents annexed to those pleadings. Therefore, the current facts must be scrutinized according to the statements made in the plaint. Therefore, contentions in the plaint need to be looked into.

**8.** The plaintiff contends that on September 25, 2016, while he was inspecting the suit property, defendant Nos. 5 to 7 threatened him, preventing him from entering the premises. Consequently, the defendants have challenged the plaintiff's ownership of the property. As a result, the plaintiff has filed the present suit seeking a declaration of ownership, asserting that the sale deeds executed in favour of defendant Nos. 5 to 7 are null and void and not binding on him. The plaintiff further claims that the Dabholkar family were tenants of the suit property and consistently paid their rent on time. Defendant Nos. 1 to 4 have no connection to the suit property, and therefore, they have no right to execute the sale deeds in favour of defendants Nos. 5 to 7. In this context, defendant Nos. 1 to 4 executed sale deeds bearing numbers 1283/2007, 1284/2007, and 1285/2007, thereby transferring possession of the suit property to defendant Nos. 5 to 7. Consequently, their names have been

registered in the revenue records for the suit property.

**9.** The plaintiff stated that the suit property is co-owned by the plaintiff and the defendant Nos. 8 to 12. There were previous suits numbered Sp.R.C.S. No.06/2008, 07/2008, and 08/2008 filed against the present defendant Nos.1 to 4 and 5 to 7 by the original tenant, Kashinath Dabholkar. These suits were based on the claim that the sale deeds executed by defendant Nos. 1 to 4 in favour of defendant Nos. 5 to 7 were null and void and sought an injunction. The plaintiff indicated that defendant Nos. 1 to 4 are the legitimate owners of the suit property and that they executed the sale deeds to defendant Nos. 5 to 7, which the plaintiff sought to cancel. Once the plaintiff's ancestor became aware of these transactions and the pending suits, he filed an application on July 17, 2010, to be included as a party in those suits. He was subsequently admitted to the suits, which were transferred to the court in Kudal and re-registered as R.C.S. No.54/2012, 55/2012, and 56/2012. The plaintiff's ancestor approached these litigation with genuine intentions. However, those suits were ultimately dismissed of on July 8, 2016. Thereafter, a cause of action arose to file the present suit. Therefore, the plaintiff filed this suit to declare that said sale deeds are null and void and not binding on them, as well as for a declaration of ownership with consequential relief of possession and injunction.

**10.** Now, a clearly written statement of the defendant cannot be perused at this stage. Defendant relied on the decision in **Tarvindersingh Mahendrasingh Dhillan Vs Ambadas Asaram Mhaske, Civil revision Application NO. 169 of 2023 decided by Hon'ble High Court, Bench at**

**Aurangabad on 7 March 2024.**

**11.** This case involved the applicant, who was the original defendant, challenging the order of the Learned Trial Court that rejected their application filed under Order VII Rule 11 of the Code of Civil Procedure (C.P.C.). The original plaintiffs, Respondents Nos. 1 to 6, filed a suit seeking partition, separate possession, declaration, and injunction. They requested a declaration that all 22 sale deeds were sham and illegal documents and not binding on them. The sale deeds in question were dated August 3, 1990. The plaintiffs alleged that Defendant Nos.1 to 17 executed these sale deeds by misrepresenting facts and committing fraud against their predecessor. This suit was filed in 2022. The plaintiffs asserted that they were still in possession of the property in question and also challenged the subsequent sale deeds. The defendants submitted an application to reject the plaint, arguing that the suit lacked cause of action and was hopelessly barred by limitation, as it was filed 33 years after the original sale deeds were executed.

**12.** The Hon'ble Court discussed the relevant principles in paragraph 13 and, in paragraph 21, stated that the main sale deeds were executed in 1990, and the subsequent deeds were transfers based on those original sale deeds. The plaintiffs sought declarations regarding the validity of the sale deeds after 30 years, despite being aware of the property transfers as early as 2018. Consequently, their claim regarding the sale deeds being non-binding was deemed time-barred, as it was not filed within three years from the date of knowledge, in accordance with Article 59 of the Limitation Act. Additionally, any other relief

sought, being consequential to the main relief, was also barred by limitation.

**13.** In light of the above findings, it is important to note that the plaintiffs' ancestors had knowledge of the sale deed executed in 2010 and subsequently filed an application for their impleadment in those suits filed earlier. Those suits were dismissed in 2016. The plaintiffs' ancestor claimed that he, along with other co-sharers, is the owner of the property based on a sale deed executed in 1903. It is evident that the plaintiff's ancestor was aware in 2010 in respect of the sale deeds executed in 2007; however, the plaintiffs do not claim that their ancestor filed a counterclaim in those suits. Therefore, the argument of the plaintiffs regarding their Bona-fide litigation or prosecution in those suits cannot be accepted. The claim that the sale deeds are not binding on them, due to not being filed within three years from the date of knowledge, is consequently barred by limitation.

**14.** Despite this, the plaintiffs are asserting ownership over the suit property, claiming it is based on the sale deed executed in 1903. They also claim possession of the suit property. The question of limitation has therefore become a mixed question of law. The plaintiffs have not specified the date of knowledge regarding the sale deed allegedly executed in 1903. If we assume that the plaintiff's ancestors became aware of this sale deed in 2010, then the suit for the declaration of ownership and possession of the property falls under Article 65 of the Limitation Act, which provides a limitation period of 12 years from the date the defendants' possession became adverse to the plaintiffs.

**15.** Furthermore, the property claimed by the plaintiff is currently in the possession of the Dabholkar family. It is unclear whether they were made parties to the suit. Therefore, the suit requires evidence to be decided on its merits, and the questions of ownership and the plaintiffs' entitlement to possession must be substantiated with credible evidence.

**16.** If the above circumstances are considered in their entirety, then according to established law, the plaint cannot be rejected partially. The plaintiff's entitlement requires a hearing regarding their claim. Therefore, the plaint cannot be rejected as a whole. Resultantly, I pass the following order:-

**:-ORDER:-**

1. Application at exh. 44 is hereby rejected.
2. No order as to cost.

(R. G. Kumbhar)

Date-10.04.2026

Extra Jt. C.J.J.D. & J.M.F.C.,Kudal.