

MHSI100001902021



-: Regular Civil Suit No. 19 OF 2021 :-

-: ORDER BELOW EXH. NO. 21 :-

This is an application filed by the Defendant No. 1 under Order VII Rule 11 of Code of Civil Procedure, 1908 (hereinafter referred as 'C.P.C.' for the sake of brevity) for rejection of Plaintiff.

02. It is contended that, the Plaintiff has filed the present suit for declaration that the relinquishment deed executed between Plaintiff and Defendant No. 1 is void and illegal and for perpetual injunction. That the suit properties were ancestral properties of Plaintiffs and Defendants. That the Plaintiff executed power of attorney dated 26.07.2002 in favour of Defendant No. 1 for executing relinquishment deed. Accordingly, on the basis of said power of attorney, on 18.01.2008, Relinquishment-Deed bearing registration No. 124/2008 was came to be executed in favour of Defendant No. 1. Since that day, Defendant No. 1 is owner of the suit property. That the Plaintiff had received notice from Talathi, Talkat in respect of Mutation Entry No. 2059 and accordingly she had raised objection to the said entry. At that time, Plaintiff had received full knowledge of Relinquishment-Deed. However, in para No. 17 of the Plaintiff it is contended that, Plaintiff got knowledge of said relinquishment deed on 20.12.2019 and thus

the same contention is completely false. That the relinquishment deed was came to be executed on 18.01.2008 and thus the suit has been filed after 13 years and 3 months. Hence the suit is barred by law of limitation. Hence it is prayed that the Plaint be rejected.

03. The Plaintiff objected the Application by filing say at EXH 23. It is contended that, the Plaintiffs and Defendant No. 1 had filed a Suit bearing RCS No. 86/2003 for partition against husband of Defendant No. 2 in Sawantwadi Court. For the purpose of filing the said suit, Defendant No. 1 had got executed Power of Attorney dtd. 24.05.2002 from Plaintiffs in his favour. Thereafter, again after 2 months, Defendant No. 1 made Plaintiffs execute Power of Attorney on 26.07.2002 in favour of Dr. Shri. Ramesh Dattaram Pendharkar stating that, it is in respect of the suit. Plaintiffs believed the Defendant No. 1 and signed certain documents. That, Plaintiff didn't even go to notary. It is further contended that, RCS No. 86/2003 was disposed of on 04.08.2012 and Plaintiff as well as Defendant No. 1 was given share in the suit property vide that judgment. So also, a Appeal filed against said decision R.A. No. 72/2014 and the decision of Trial Court was confirmed. Having this position, when right of Plaintiffs in suit property was declared in year 2012, during pendency on that i.e. on 17.01.2008, Defendant No. 4 made false Relinquishment-Deed in respect of share of Plaintiffs in favour of Defendant No. 1. It is further contended that, though the Plaintiff have appeared before

Talathi and objected the Mutation Entry No. 2059, its decision was not communicated to the Plaintiffs by the Talathi. Thereafter on 10.12.2019 Plaintiff received a partition notice. When Plaintiffs went to the suit properties for measurement on the date fixed, Defendant No. 1 informed the concerned officer that, Plaintiffs name is not reflected over the 7-12 extract of the suit properties. When, Plaintiffs tried to find out how their name is not reflected in the 7-12 extract despite share being allotted by the Civil Court, they found out that their names came to be deleted vide Mutation Entry No. 2059 and hence the Plaintiff have filed the present suit after gaining knowledge about the decision in Mutation Entry No. 2059. It is thus contended that, as the Relinquishment-Deed was executed during pendency of RCS No. 86/2003, the same is illegal and thus the suit is well within limitation and hence, the plaint cannot be rejected. Hence, it is prayed that, the application be rejected.

04. Perused the Application and say. Perused the documents filed on record. Heard Ld. Advocate for the Defendant and Plaintiff. Considering the rival contention, following Points arise for my determination and its findings alongwith reasons are as follows:

<u>SR. NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the plaint is liable to be rejected ?	No.
2	What Order ?	Application is rejected.

:- REASONS :-**As to Point No. 1 :-**

05. The Ld. Advocate for the Defendant argued that, the Relinquishment-Deed has been executed in the year 2008 and now after 13 years, the Plaintiff had filed the present suit for its cancellation. That, the Plaintiff had knowledge about the present Relinquishment-Deed as they had received notice from Talathi. However, they did not file any suit at that time. Now such suit cannot be entertained as the suit does not fall within limitation and is barred. Hence, it is prayed that, the application be allowed and plaint be rejected.

06. On the other hand, it is argued on behalf of Plaintiffs that, the Plaintiff had no knowledge about the execution about Relinquishment-Deed. It is when the Plaintiffs went for measurement on the suit property as per Notice received, they came to know about the decision of Talathi. Hence, in the year 2019, the Plaintiff had knowledge about the same and thereafter the suit has been filed. Hence it is argued that, the plaint is well within limitation and the application be thus rejected.

07. On perusal of the plaint it can be seen that, the suit has been filed for cancellation of Relinquishment-Deed dtd. 17.01.2008. It can be seen that, earlier the Plaintiff had executed Power of Attorney dtd. 24.05.2002 in favour of

Defendant No. 1 for filing of R.C.S. No. 86/2003. It can further appear that, the said RCS 86/2003 was disposed off on 04.08.2012 and the shares in suit property were declared in favour of Plaintiffs and Defendants. However, there is another Power of Attorney executed in favour of Defendant No. 4 by Plaintiffs and using said power of Attorney Defendants No. 4 appears to have relinquished the shares of Plaintiffs in favour of Defendant No. 1 on 17.01.2008 vide executing registered Relinquishment-Deed. The said fact has not been denied by the Defendants.

08. At this juncture it can be seen that, when the suit bearing RCS No. 86/2003 was pending before Sawantwadi Court, the disputed Relinquishment-Deed appears to have been executed in favour of Defendant No. 1. This means during pendency of suit such documents has been executed. The said RCS No. 86/2003 was admittedly came to be disposed of in year 2012 and its appeal was came to be rejected in the year 2018.

09. It is contentions of the Defendant that, at the time of Mutation Entry No. 2059, the Plaintiff had full knowledge about the Relinquishment-Deed and after 13 years Plaintiff have filed the suit. However, it is required to understand that, Relinquishment-Deed appears to be executed before declaration of share between the Plaintiff and during the pendency of the suit. So also, as per Plaintiffs though they have received notice from Talathi, they had no knowledge about its final decision and

they came to know only at the time of partition during measurement. Thus, considering the entire circumstance of the case, time at which the shares of Plaintiffs were declared, date on which Relinquishment-Deed made in favour of Defendant No. 1, the present suit for declaring such Relinquishment-Deed null and void can not be said to be barred by law of limitation. The said question is required to be decided only after giving opportunities to the parties to lead their evidence as the same involves mixed question of fact and law. Hence, the plaint is not liable to be rejected. Accordingly, I answer point No. 1 in the **Negative.**

As to Point No. 2 :-

10. From the discussion made in above point, it is clear that's plaint is not liable to be rejected. Hence, the application is liable to be rejected with costs. Accordingly, as answer to this point I proceed to pass the following -

:: O R D E R ::

1) Application is rejected with costs.

(Dictated and pronounced in open Court.)

Place : Dodamarg.
Date : 11.07.2022

(Y. P. Bavkar)
Civil Judge, (Jr. Division),
Dodamarg.