

ORDER BELOW EXH 24 IN RCS No. 95/2025

(CNR NO MHSN070008732025)

(Suhas Shamrao Patil Vs. MS Sarjan Reality Private Limited)

The present application has been filed by the defendant no. 2 under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure, 1908 (*herein after called as CPC for the sake of brevity*) for rejection of plaint.

**02.** According to applicant/ defendant No.2 the present suit has been filed for execution of sale-deed and perpetual injunction. However, there is no cause of action arose to file present suit. The cause of action mentioned in Para No.7 of the compliant is illusory one. It is further contention of the applicant that, the plaintiff had handed over the possession of the suit property in the year 2006 by executing an irrevocable power of attorney in favour of defendant No.1. After taking possession of the suit property, defendant No.1 developed the suit property. Since 2006 the plaintiff never revoked the power of attorney and it is till intact. Therefore, defendant No.1 was competent to dispose of the property. Accordingly, he sold the suit property to the applicant, by executing registered sale-deed. The said deed executed in favour of defendant No.2 is legal, valid and binding upon the plaintiff. The plaintiff has no right to claim cancellation of the said sale-deed and also to repurchase the suit property.

**03.** It is further contention of the applicant that, the facts now alleged by the plaintiff in this suit, having no place in the original executed documents. While executing sale-deed of plaintiffs other remaining land, he admitted the defendants ownership and possession over the suit property. According to the applicant the provisions of Section 63-1A of Bombay Tendency and Agricultural Land Act, 1948 ( in short the Act) are not applicable in the present suit. Therefore, the plaintiff has no right of repurchase the suit property and accordingly there is no cause of action to file this suit. Hence, prayed for rejection of plaint Under Order VII Rule 11 (a) of the Code of Civil Procedure.

**04.** It is further contention of the applicant that, since 2006 to 2025 the plaintiff neither complained against defendant No. 1 about ownership and possession of the suit property, nor canceled agreement and power of attorney executed in favour of defendant No. 1. The plaintiff has not mentioned in the suit that under which Act he has right to repurchase the suit property. Hence, the suit is not within limitation. Hence, also liable to be rejected Under Order VII Rule 11 (d) of the Code of Civil Procedure. Hence lastly prayed for allowing this application.

**05.** The plaintiff filed his say at Exh. 34 and opposed the application. According to the plaintiff the present application has been filed without proper reading of the plaint, only to delay hearing on the Temporary Injunction application. He further contended that, defendant No.1 never informed him about cancellation of the agreement dated 22.10.2024. Defendant No. 1 never utilized the land for the agreed

purpose and sold the same without informing to the plaintiff and thereby violated agreement and misused the power of attorney. Since, the transaction amounts to non agriculturist acquiring rights in agricultural land without statutory permissions. Therefore, the provisions of Section 63 – 1A of the Act applicable in the suit. As the deed was executed on 07.05.2025, by violating terms of agreement. Therefore, the suit is within limitation. Hence, prayed for rejection of the application.

**06.** Considering the contentions of both sides, documents on record and arguments advanced by learned advocates for both sides, following points arise for determination and my findings against each of them for the reasons given below :

Sr. No.	POINTS FOR DETERMINATION	FINDINGS
1.	Whether the plaint is liable to be rejected under Order VII Rule 11 (a) and (d) of CPC ?	... NO
2.	What Order ?	<b>Application is rejected.</b>

### REASONS

#### AS TO POINT NO.1 -

**07.** Ld. Advocate for the plaintiff submitted that, the power of attorney was executed only for establishing windmill project upon the suit

property and not for alienation of the property. Therefore, defendant No. 1 has no right to sale the land. However, he sold the same behind back of the plaintiff. Therefore, the purpose of power of attorney is failed and hence the plaintiff has right to repurchase the suit property accordingly there is cause of action to file this suit. By violating terms the defendant No. 1 sold the suit property to defendant No. 2 on 07.05.2025. Therefore, the suit is within limitation.

**08.** In retort, Ld. advocate for the defendant No. 2 submitted that, the sale-deed executed in the month of May 2025 in favour of agriculturist i.e. defendant No. 2 and therefore, the transaction not hit by Section 63 of the act. Therefore, there is no cause of action to file this suit. In support of the same, Ld advocate for the applicant has relied upon the decision of Honorable Apex Court in *V. Ravikumar Vs. S. Kumar, 2025 SAR (Civ) 926*.

**09.** Perused the record. The present suit is filed for repurchase of the suit property and cancellation of sale-deed and perpetual injunction. The plaintiff specifically pleaded that, he had not executed any power of attorney in favour of defendant No. 1, conferring authority to sale the suit land. The power of attorney and agreement was executed for some other limited purpose. However by violating terms of that documents, defendant No. 1 sold the suit land to defendant No. 2 in the month of May 2025. The defendant No. 1 not used the land for the agreed purpose. Accordingly he has violated Section 63-1 of the Act, therefore the suit is filed.

10. Section 63- 1 of the Act prohibits the transfer of an agricultural land in favour of a non agriculturist without prior permission of the Collector. Sub Section 1-A of the Act further prohibits indirect devices to achieve such transfer. The pleadings of the plaintiff prima facie shows that, he has executed power of attorney to a non agriculturist i.e. defendant No. 1 for a specific purpose. However, without using the property for the agreed purpose, he subsequently sold out the suit property to defendant No. 2 and such subsequent sale was beyond the scope of the authority.

11. In **V. Ravikumar (supra)** it is observed that, conveyances made under valid power of attorney are not automatically defeated by letter cancellation in the absence of fraud or want of authority. However, in the present suit, the plaint specifically alleges that, the power of attorney was executed only for limited purpose i.e. for windmill project. However, no such project was build upon the suit property. Without using the land for agreed purpose the sale of land was effected in favour of defendant No. 2, without consent or notice to the plaintiffs. Hence, the observations from **V. Ravikumar (supra)** are not helpful to the applicant.

12. Whether defendant No. 1 possessed authority to sale after failure of the purpose; Whether the sale-deed dated 07.05.2025 is hit by Section 63 or 63(1-A) and whether the suit is barred by limitation are all mixed questions of fact and law to be decided after evidence adduced by the parities. Thus, the plaint raises triable issues regarding the validity and scope of power of attorney and agreement, alleged breach thereof and

possible violation of Section 63 of the Act. Selective reading of one clause from the power of attorney or agreement can not justify to rejection of the plaint threshold. Hence, at this preliminary stage it can not be said that, no cause of action is disclosed in the plaint or the suit is bared by law of limitation. Considering the facts and circumstances discussed above the plaint can not be rejected. Hence I answer point No. 01 in negative and in answer point No. 2 I pass following order;

### **O R D E R**

1. Application is hereby rejected.
2. Costs shall follow the event.

Date :- 12/12/2025  
Place :- Kavathe Mahankal

( M. A. Kulkarni )  
Jt. Civil Judge Junior Division,  
Kavathe Mahankal.