

MHST130007512024 	R.C.S. No. 264/2024 Anandrao Hindurao Mane Vs Arun Baban Pawar
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ORDER BELOW EXHIBIT 15

The present suit has been filed by the plaintiff seeking a declaration that the registered sale deed bearing Document No. 282/2011, dated 24/01/2011, executed by Defendant No. 5, Hindurao Mane, in favour of Defendant Nos. 1 to 4, is illegal, void, and not binding upon the plaintiff's share in the suit property. The plaintiff avers that the suit property, bearing Gat No. 57, is a joint family property, and the said sale was fraudulently obtained by the defendants from his father, Defendant No. 5, who was an elderly person addicted to alcohol. The plaintiff claims that the said deed is also illegal as the land, having been acquired under Section 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948, is prohibited from transfer without prior government permission. The plaintiff states that he was residing away from the village for a long time and only came to know about the fraudulent transaction in the year 2023, after which he issued a legal notice to the defendants.

02. The defendant Nos. 1 to 4 have filed the present application under the provisions of Order 7 Rule 11 of the Civil Procedure Code, 1908, seeking the rejection of the plaint on the grounds that the suit is barred by the law of limitation. The

defendants contend that the sale deed was executed in 2011, and it is highly improbable that the plaintiff, whose name was already on the 7/12 extract for a related property (Gat No. 57), would not have known about the transaction for thirteen years. They argue that the plaintiff's silence and failure to object to the mutation entry and the defendants' subsequent actions of installing a water pump and an electric connection on the land are proof of his knowledge and implied consent to the transaction. It is submitted that the cause of action for the suit arose in 2011 and, by filing the suit in 2024, the plaintiff has misused the court process by bringing a time-barred and frivolous claim based on false and contradictory statements.

03. The plaintiff has filed a reply to the application, stating that the defendants' contentions are false and baseless. The plaintiff reiterates that he was living and working outside the village for a prolonged period and was genuinely unaware of the fraudulent transaction. It is averred that the defendants took undue advantage of their father's alcoholism and executed the "hollow and no-consideration" deed without the consent of the other coparceners. The plaintiff claims that he first came to know about the sale deed in 2023, and therefore, the suit is well within the limitation period from the date of discovery of the fraud. He also highlights that the deed is fundamentally illegal and void *ab initio*, as it violates the provisions of the Maharashtra Tenancy and Agricultural Lands Act and was executed without the required government permission. The plaintiff further alleges that the

defendants are harassing and threatening him and his family and seeks the court's protection.

04. I have considered the arguments of both parties and have carefully perused the plaint and the application. The law regarding the rejection of a plaint under **Order 7 Rule 11** is well-settled. For the purpose of this application, the court must only look at the averments made in the plaint and must accept them as true. The court cannot consider the defence raised by the defendants, nor can it embark upon an inquiry into the disputed questions of fact. The primary ground for the defendants' application is that the suit is time-barred. However, the plaintiff has specifically pleaded that the cause of action arose only in 2023, when he first discovered the fraudulent transaction. This is a crucial distinction, as per the **Limitation Act, 1963**, the period of limitation for a suit based on fraud begins from the date the fraud is discovered, or with reasonable diligence could have been discovered. The question of whether the plaintiff had prior knowledge or whether the suit is indeed time-barred is a mixed question of fact and law that can only be decided after the parties have led their respective evidence during the trial. Furthermore, the plaintiff's assertion that the sale deed is **void *ab initio*** due to a legal prohibition on the transfer of the land raises a fundamental legal question that cannot be summarily dismissed at this stage. If the transaction is found to be void from its inception, the law of limitation may not even apply in the same manner. The plaintiff's claim of fraud and his assertion that the sale deed is void due to a legal prohibition on the transfer of the land constitute a valid cause

of action. The allegations of fraud, misrepresentation, and the fact that the plaintiff was unaware of the transaction due to living away from the village, are all triable issues of fact that warrant a full trial.

05. It is also imperative to note that the plaintiff's suit not only seeks a declaration but also prayers for a permanent injunction to restrain the defendants from interfering with his possession and use of the property. The cause of action for a permanent injunction is considered a continuously recurring one. Every time the defendants allegedly interfere with the plaintiff's right to the land, a new and distinct cause of action arises. This prayer for relief, therefore, is not time-barred. A fundamental principle of law, firmly established by the Hon'ble Supreme Court in a long line of judgments, including **Sejal Glass Ltd. v. Navilan Merchants Pvt. Ltd. (2018) 11 SCC 780**, is that a plaint must be rejected in its entirety or not at all. The provisions of **Order 7 Rule 11** do not contemplate the rejection of a plaint in part. If the plaint discloses a valid cause of action for even one of the reliefs claimed, the entire plaint must be allowed to proceed for trial. Since the prayer for a permanent injunction, being based on a continuously recurring cause of action, is not time-barred, and a valid cause of action is disclosed, the entire suit, including the prayer for a declaration, must be allowed to proceed for trial.

06. At this stage, it is pertinent to place reliance on the judgment of the Hon'ble Supreme Court in **Prem Singh and Others v. Birbal and Others, (2006) 5 SCC 353**. In this landmark case, the

Hon'ble Supreme Court made a clear distinction between a void and a voidable document. The Court held that a suit for a declaration that a sale deed is void is not governed by **Article 59 of the Limitation Act, 1963**. It was observed that a document that is void *ab initio* need not be set aside, as it has no legal effect in the eyes of the law. This citation is directly applicable to the present case. The plaintiff has not only pleaded fraud but has also contended that the sale deed is void *ab initio* as the transfer of the suit property is prohibited by law. This legal position directly supports the plaintiff's contention that the suit is not time-barred, as a void transaction, in certain circumstances, may be challenged at any time.

07. The defendants have relied on several citations to support their contention that the suit is barred by limitation and the plaint should be rejected. This Court has considered each of them.

08. **AIR 2022 Supreme Court 4724, C.S. Ramaswamy v/s V K. Senthil & others, Civil Appeal Nos. 500 with 504, 505, 506, 502, 501 and 503 of 2022 dated 30/9/2022:** The Hon'ble Supreme Court in this case held that if the plaintiff does not challenge a registered sale deed within the three-year limitation period, the suit is liable to be dismissed as time-barred. The Court observed that the limitation period for challenging a voidable document begins from the date the document is executed. However, the facts of the present case are distinguishable. The plaintiff has not only alleged fraud but has also contended that the sale deed is **void ab**

initio as the transfer of the land is legally prohibited. This citation is not applicable, as it pertains to a voidable transaction, whereas the present suit is based on the claim of a void transaction.

09. AIR 2019 Supreme Court 1430, *Raghwendra Sharan Singh V/s Ram Prasanna Singh (dead) by Lrs*, Civil Appeal No. 2960 of 2019: In this case, the Hon'ble Supreme Court reiterated the principle that a suit for cancellation of a document should be filed within three years from the date the cause of action arises. The Court emphasised that an illiterate person is presumed to have knowledge of the document when it is registered. This citation is also not applicable. The plaintiff's claim is not merely for the cancellation of a voidable document but for a declaration that a void transaction is not binding on him. The plaintiff's claim of fraud and that the transaction is void *ab initio* due to a legal prohibition are matters to be decided on evidence at trial, and cannot be summarily dismissed on the basis of limitation alone.

10. 2024 (6) ALL MR 122, High Court of Bombay Bench at Aurangabad, *Tarvindarsingh Mahendrasingh Dhillan v/s Ambadas Asaram Mhaske & others*, Civil Revision Application No. 169 of 2023, dated 7 March 2024: The Hon'ble High Court in this case observed that the limitation period for challenging a deed begins from the date of its execution. While upholding the general principle of limitation, this judgment also acknowledges the exception in cases of fraud. The plaintiff's specific plea that he was residing away from the village and was unaware of the fraudulent transaction creates a triable issue of fact regarding the date of

discovery. Therefore, this citation, while relevant to the law of limitation, does not warrant the rejection of the plaint at this preliminary stage, as the court must accept the plaintiff's averments regarding fraud and its discovery as true for the purpose of this application.

11. **AIR 2019 Madhya Pradesh 165, *Sudhirdas V/s United Church of D Canada India, Dhar Beneficiary and others, Civil Revision No. 41 of 2019, dated 18/06/2019***: The Madhya Pradesh High Court in this case held that a suit for declaration of a sale deed as void and not binding, which is filed after the period of limitation, should be rejected under Order 7 Rule 11. The Court observed that even if the document is void, the party must approach the court within the prescribed time limit. However, the facts of the present case are distinguishable. The plaintiff's case is not only based on a void transaction but also on fraud, with a specific plea regarding the late discovery of the fraud. This citation, therefore, is not applicable to the present case, as the plaintiff's specific pleadings must be examined during a full trial.

12. **AIR 2023 Gujarat 102, *Shantilal Shankarbhai Patel (dead) by LR.s v/s Pate Dalsukhbhai nanbhai (dead) by LR.s, R/First Appeal No. 1560 of 2023, dated 13/4/2023***: In this case, the Hon'ble Gujarat High Court held that a suit challenging a document based on fraud is governed by Article 59 of the Limitation Act, and the period of three years begins from the date the plaintiff has knowledge of the fraud. This judgment, in fact, supports the plaintiff's case. The plaintiff has specifically pleaded

that he became aware of the fraud only in 2023, and therefore, the suit filed in 2024 is within the limitation period as per the law. Thus, the citation relied upon by the defendant is not applicable to dismiss the plaint but instead supports the plaintiff's claim that the suit is not time-barred.

13. Therefore, a prima facie reading of the plaint reveals a valid cause of action. The defendants' arguments regarding the plaintiff's alleged knowledge, the legitimacy of their possession, and the alleged contradictions in the plaint are all matters of defence that cannot be determined at this preliminary stage. Consequently, the application filed by the defendants under Order 7 Rule 11 of the Civil Procedure Code is not maintainable at this juncture. In light of the above, I pass the following order.

ORDER

The application is hereby rejected.

Date:- 22.09.2025

(Rajesh M. Lolge)
Civil Judge Jr. Division, Patan