

MHWR010016832025 	Presented on : 25-08-2025 Registered on : 26-08-2025 Decided on : 12-08-2026 Duration : 00 Years, 11 Months, 18 Days
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THE COURT OF DISTRICT JUDGE-1, WARDHA.

(Presided over by Shri. S.T. Soor)

Regular Civil Appeal No.82/2025Exh.15

Rajesh S/o. Homdev Khairkar,
Aged 46 years, Occu.: Service,
R/o. Plot No.15, Anu-Keshav Building,
Empress Mills Colony, Behind Medical College,
Nagpur - 440 027
(Defendant No.1 in R.C.S. No.179/2021)

..

Appellant**..V/s..**

- 1] Vijay Ramchandra Maheshgauri,
Age 56 years, Occu.: Service,
R/o. Nagsen Nagar, Deshpande Layout, Wardha.
(Plaintiff in R.C.S. No.179/2021)
- 2] Pravine S/o. Homdev Khairkar,
R/o. Plot No.15, Anu-Keshav Building,
Empress Missls Colony,
Behind Medical College, Nagpur - 440027.
- 3] Mayuri W/o. Ajay Anantwar,
R/o. Nagsen Nagar, Deshpande Layout, Wardha.
- 4] Ajay Krishnarao Anantwar,
Police Quarter No.3-4, Wardha.
- 5] Mangala D/o. Janardhan Tarale,
R/o. Nagsen Nagar, Deshpande Layout, Wardha.

- 6] Sandeep S/o. Prakash Kharat,
C/o. Mangala Tarale, R/o. Police Quarter,
Behind Kesarimal High School, Wardha.
- 7] Sau Shobha Bharatsingh Parmar,
C/o. Bharatsingh Parmar, Malgujaripura, Wardha.
- 8] State of Maharashtra,
Through Collector, Wardha
R/o. Collector Office, Wardha.
- 9] Sub-Divisional Office,
R/o. Tahasil Office, Wardha.
- 10] Tahasildar,
Tahasildar Office, Wardha.
- 11] Talathi of mouza Umri (Meghe),
R/o. Talathi Office, Mouza Umri (M),
Tah. & Dist.Wardha.

.. **Respondents****APPEARANCE:**

Shri S.J. Kamble, Advocate for the Appellant,
Shri A.S. Songade, Advocate for Respondent No.1,
Respondents No.2, 3, 5 and 6 formal parties as per pursis
Exh.12 filed by Advocate for appellant,
Respondent No.7 proceeded Ex-partee,
Shri V.R. Ghude, A.P.P. for the Respondents No.8 to 11.

JUDGMENT(Delivered on this 12th day of August, 2026)

The original defendant No.1/appellant has preferred present appeal against the order dated 17.07.2025 in Regular Civil Suit No.179/2021 whereby the learned Civil Judge, Senior Division, Wardha rejected application (Exh.50) filed by defendant

No.1 for rejection of plaint under Order 7, Rule 11 of the Code of Civil Procedure. Respondent No.1 is that original plaintiff in the suit and other respondents are defendants in the suit. (For the sake of convenience, parties are hereinafter referred to as per their original status in the suit).

2] Facts leading to the filing of this appeal are that the plaintiff had filed above suit for declaration, permanent and mandatory injunction against respondents regarding Plot No.37 (suit property). In the suit, defendant No.1 filed application (Exh.50) for rejection of plaint contending that the suit property was sold to the father of plaintiff on 05.04.1989 by unregistered deed. Plaintiff has challenged order of Naib Tahsildar dated 10.04.2017. By said order, plaintiff was directed to approach the Court for necessary correction, if so. Name of father of defendant No.1 is on 7/12 extract since the year 1989. However, plaintiff has filed the suit after delay of more than 11736 days. Thus, the suit is barred by limitation. Hence, defendant No.1 had filed application Exh.50 for rejection of plaint under Order 7, Rule 11 of the Code of Civil Procedure on the ground that the suit is barred by limitation. However, the learned Trial Court rejected said application. Hence, being aggrieved and dissatisfied with the impugned order, defendant No.1 preferred this appeal.

3] Learned Advocate for plaintiff/respondent No.1 raised objection that as the impugned order is interlocutory, appeal is not tenable.

4] Heard learned Advocates for the parties. Perused the record. In view of above, following points arise for my determination. My findings thereon for the reasons are as under:-

Sr. No.	Points	Findings
1]	Whether impugned order passed by the learned Trial Court rejecting application of defendant No.1 under Order 7, Rule 11 of the Code of Civil Procedure is legal and proper?	Yes.
2]	Whether appeal is tenable?	No.
3]	What order and decree?	The appeal is dismissed as per the final order.

REASONS

Points No.1:

5] Learned Advocate for the appellant filed written notes of argument at Exh.14 and submitted that earlier, defendant No.1 had preferred appeal against order dated 27.09.2021 below Exh.10 in the same suit along with application for condonation of delay of about 17 days vide M.J.C. No.138/2021 but said application was rejected by the Hon'ble Principal District Judge, Wardha on 24.08.2023. According to him, when delay of merely 17 days can not be condoned then how delay of more than 11736 days can be condoned in filing suit. Thus, he submitted that impugned order passed by the learned Trial Court rejecting application Exh.50 of defendant No.1 for rejection of plaint under Order 7, Rule 11 of the Code of Civil Procedure is not legal and proper. Thus, he prayed for

allowing the appeal.

6] On the other hand, learned Advocate for plaintiff/respondent No.1 submitted that before rejection of application (Exh.50), defendant No.1 had filed similar application (Exh.10) for rejection of plaint and said application was rejected by the Trial Court on 27.09.2021. Against said order, the appellant had preferred appeal along with the application for condonation of delay vide M.J.C. No.138/2021 and said application was rejected by Hon'ble Principal District Judge, Wardha on 24.08.2023. So also, the appeal is not tenable under Section 96 of the Code of Civil Procedure as the suit is not finally decided by the learned Trial Court. Thus, he prayed for dismissal of appeal.

7] From the perusal of record, it appears that defendant No.1 had earlier filed application (Exh.10) for rejection of plaint under Order 7, Rule 11 of the Code of Civil Procedure and said application was rejected by the learned Trial Court on 27.09.2021 against which the appellant had preferred appeal along with delay condonation application vide M.J.C. No.138/2021 and said application for condonation of delay was rejected by the Hon'ble Principal District Judge, Wardha on 24.08.2023.

8] From the perusal of copy of order dated 24.08.2023 in M.J.C. No.138/2021, it appears that as the appeal was not itself tenable under Order 43 of the Code of Civil Procedure, application for condonation of delay filed by defendant No.1 was rejected. Hence, I do not find substance in the contention of learned

Advocate for the appellant that when delay of about 17 days cannot be condoned as per the order of Hon'ble Principal District Judge, Wardha in M.J.C. No.138/2021 then how the delay of more than 11736 days in filing the suit.

9] Advocate for the appellant filed on record copy of issues and additional issues. It appears that as regard the grievance of defendant No.1, the learned Trial Court already framed Issue No.9 on the point of limitation and the matter is posted for evidence of the parties. The issue of limitation is a mixed question of facts and law. So also, burden of proof lies on defendant to prove that the suit is barred by limitation. It needs evidence on merit. As per Order 14, Rule 2 of the Code of Civil Procedure, the Court shall pronounce judgment on all issues notwithstanding that a case may be disposed of on a preliminary issue. So also, Section 9A of the Code of Civil Procedure pertaining to framing of preliminary issue inserted by Maharashtra Act 65 of 1977 is deleted vide Maharashtra Act 61 of 2018 with effect from 27.06.2018. Under the facts and circumstances, the impugned order passed by the learned Trial Court appears to be legal, proper and justifiable. I do not find any perversity in the impugned order. Accordingly, Point No.1 is answered in the affirmative.

Points No.2 and 3:

10] As per Section 2 of the Code of Civil Procedure, decree means the formal expression of an adjudication which, so far as regard the Court expressing it, conclusively determines the rights of

the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. Decree shall be deemed to include the rejection of plaint and the determination of any question within Section 144 but shall not include any adjudication from which an appeal lies as an appeal from an order or any order of dismissal for default. Thus, rejection of plaint under Order 7, Rule 11 of the Code of Civil Procedure amounts to decree. However, rejection of application for rejection of plaint under Order 7, Rule 11 of the Code of Civil Procedure does not amounts to decree. Hence, the appeal is not maintainable as per the provisions of Section 96 of the Code of Civil Procedure r/w Order 41 and 43 of the Code of Civil Procedure. Thus, appeal is liable to be dismissed with cost. Accordingly, Point No.2 is answered in the negative and as to Point No.3, this Court proceed to pass the following order.

Order

- (i) The appeal is dismissed with costs.
 - (ii) Decree/Bill of Cost be drawn up accordingly.
- Judgment dictated and pronounced in open Court.

Date: 12-08-2026

(S.T. Soor)
District Judge-1,
Wardha.

CERTIFICATE

I affirm that the contents of this P.D.F. file are the same word to word, as per the assigned order.

(Madhav A. Chaudhari)
Stenographer