

MHWR090000122014



IN THE COURT OF CIVIL JUDGE (JUNIOR DIVISION), KARANJA GHA.
(Presided Over by Diksha D. Vighne)

Regular Civil Suit No. 31/2013

Ramesh Vishwasrao Dongare

----- Plaintiff

-Versus-

Vishwasrao Sitaram Dongare+8

----- Defendants

Appearance:- Advocate for Plaintiffs :- Shri. A. P. Paradkar
 Advocate for Defendant 9 :- Smt. V. B. Shende

Order Below Exh.90

(Passed on 11/11/2025)

This is an application filed by defendant no. 9 under Order VII Rule 11 of Code of Civil Procedure, for rejection of plaint.

2. Defendant no. 9 has stated and submitted that plaintiff has filed present suit for declaration, partition, separate possession and permanent injunction against defendants. The suit is based on document of sale deeds which were executed on 19.04.2004 and 02.02.2005 in favor of defendant no.4 by defendant no. 1 to 3. The defendant no. 9 has purchased suit land i.e. khasra no. 85/88/3/G area 1.01 HR and khasra no. 85/88/3/KH total area 1.01 HR, class 1, Mauza Sawali Tq. Karanja Ghadage, from defendant no.1 on 05.05.2016. It is further stated and submitted that in plaint para no. 4 and 7 there is clear pleading of the plaintiff that he is under knowledge about the execution of sale deed dated 19.04.2004 and 02.02.2005 and by giving excuse of some reason, the plaintiff is going to challenge the above sale deed which

were executed in the year 2004-2005. As per section 57 and 58 of the Limitation Act, the suit for declaration about declaring the sale deed dated 19.04.2004 and 02.02.2005 as bogus, null and void, is barred by limitation. Thus, plaintiff has no cause of action for filing the present suit. As well as, the plaintiff has file present suit for declaration by challenging the sale deed dated 19.04.2004 and 02.02.2005, and also claimed for possession. There is no declaration has been sought by the plaintiff about declaring himself as an owner of suit property. Therefore, in the absence of said declaration he cannot claim for permanent injunction. Moreover, the plaintiff also filed suit for separate possession and for claiming possession he has to pay the requisite court fee as per the market value of suit property to the extent of his claim share. But in this suit, he has not paid the requisite court fees for claiming possession. Hence, the suit of plaintiff is not maintainable being undervalued. Hence, on aforesaid grounds she has prayed for rejection of plaint as per Order 7 Rule 11 (a) and (d) of CPC.

3. On contrary, learned advocate for plaintiff has filed his reply at Exh.91 and opposed this application. According to him, defendant no.9 has executed false sale deed dated 05.05.2016 after filing of this suit. Therefore, the sale deed dated 05.05.2016 is void, illegal and nominal on the basis of principle of *lis pendence*. Plaintiff has specifically pleaded about cause of action and limitation of suit in plaint para no 8 to 10. Burden is on the plaintiff to prove that cause of action for filing suit is within period of limitation. This question is mixed question of fact and law. Therefore, this issue can only be decided after evidence. The burden to prove issue of limitation and cause of action is on the plaintiff. Hence, in such circumstances the application needs to be rejected. Hence, he has prayed for rejection of this application.

4. Perused application and say thereon. Heard both side. On perusal

of record it is seen that defendant no. 9 is a subsequent purchaser of suit property i.e. khasra no. 85/88/3/G total area 1.01 HR and khasra no. 85/88/3/KH total area 1.01 HR, class 1 at Mauza Sawali Tq. Karanja Ghadage. Accordingly, defendant no.9 was subsequently made party in this suit. It is settled proposition of law that in an application filed under order 7 rule 11 of CPC, the Court has to look into the averments made in the plaint and the documents filed along with the plaint alone. At that stage, the Court cannot look into the written statement or the documents filed along with the written statement. Thus, on the basis of this proposition, it is necessary to consider only plaint and documents filed by plaintiff to decide this application.

5. On perusal of plaint, it is seen that plaintiff has pleaded about execution of sale deed dated 19.04.2004 and 02.02.2005 in plaint para no. 4, 5 and 7. Pleadings in para no.4, 5 and 7 have prima facie shows knowledge of plaintiff about execution of those documents. However, while considering pleading of plaintiff the whole plaint needs to be read together. Only averments in specific paragraphs are not sufficient for rejection of plaint in whole. On the perusal of entire plaint, it is seen that plaintiff has claimed fraudulent and bogus execution of sale deed of dated 19.04.2004 and 02.02.2005, at the time of execution those were executed for the security purpose but later those were fraudulently used by defendants. The question of limitation for cause of action is a mixed question of law and fact. This question cannot be decided without giving opportunity of evidence to the party on whom the burden of proof lies. In present case, the burden of proof about limitation of cause of action has lies on the shoulder of plaintiff. However, it is seen from record that issue regarding limitation of cause of action has not framed. This issue is necessary for adjudication of dispute between plaintiff and defendants. Hence, I proceed to frame issue regarding limitation for cause of action at Exh. 42-B. However, considering aforesaid reasons, on this ground plaint cannot be rejected.

6. Another issue raised by learned advocate for defendant no. 9 is undervaluation of court fees. It is seen that plaintiff in para no. 11 of plaint has described about valuation of suit property. The plaintiff has claimed nature of suit property as ancestral property and property purchased from income of ancestral property. Accordingly, he has paid together court fees for partition and separate possession as per section 6 (vii) of Maharashtra Court Fees Act. As per this provision, there is no need to pay separate court fees for possession. As well as, he has paid separate court fees for declaration of cancellation of sale deed date 19.04.2004 and 02.02.2005. Moreover, he has paid separate court fees for permanent injunction. When plaintiff has already paid court fees for every relief then for this reason plaint of plaintiff cannot be rejected. Therefore, considering aforesaid reasons, I hold that there is no merit in the application of defendant no.9. Hence, I pass following order.

ORDER

1. Application is rejected.
2. Additional issues regarding point of limitation of cause of action is framed at Exh.42-B.

Date: 11.11.2025

(Diksha D. Vighne)
Civil Judge (Jr. Dn.),
Karanja Ghadage