



Regular Civil Suit No. 2/2019

----- **Plaintiff**

-Versus-

----- Defendants

Appearance:- Advocate for Plaintiffs :- Shri. Sayyad A. Ali
Advocate for Defendants :- Shri. J. D. Topale

Order Below Exh. 31

(Passed on 15/10/2025)

This is an application filed by defendant no.2 for rejection of
plaint.

2. It is stated and submitted by defendant no.2 that plaintiff has filed suit for declaration, possession and injunction. The suit of plaintiff has appeared as under-valued. The market value of the suit property is Rs.33,96,043/-. For the purpose of possession, as per section 6(v) of Maharashtra court fees Act 1951, the court fee stamp be paid on market value of the house property. But plaintiff has not paid court fees stamp according to market value of the suit house i.e. on Rs.33,96,043/-. The plaintiff has paid insufficient court fees for the purpose of possession of house. Therefore, it is necessary to reject the plaint of plaintiff. The

proper valuation of suit property is not made. Pecuniary jurisdiction of this court is upto Rs.5,00,000/-. The suit valuation is more than pecuniary jurisdiction of this court. Hence, for this reason also the plaint is liable to be rejected.

3. It is further stated and submitted that, plaintiff has created purely illusory cause of action in the present suit. There is no cause of action in the present suit. The prayer made in the present plaint by stating no cause of action. The suit plot was never in possession of plaintiff. Plaintiff has not pleaded anywhere in his plaint that when or on which date he was dispossessed. The defendant no.2 is in possession of suit plot since 1989. Hence, plaintiff's suit is not within limitation. The cause of action pleaded by plaintiff is barred by law and therefore the plaint is vexatious and meritless in not disclosing a clear right to sue and in these circumstances, plaint is liable to be rejected under order VII Rule 11 of CPC. It is further submitted by learned advocate for defendant no.2 that house property is subject matter in this suit and market value of that property is Rs.33,96,043/-. However, the court fees have not paid as per market value of house property and therefore court fees paid by plaintiff is undervalued. As well as, amount of subject matter is beyond pecuniary jurisdiction of this court and therefore this court has no pecuniary jurisdiction to entertain this suit. It is further submitted that cause of action for filing this suit has not disclosed by plaintiff in his plaint. The date of registration of sale deed which is of the year 1985 and 1989, shows that the present suit has filed after 30 to 40 years after execution of sale deed. No explanation has given in the plaint by plaintiff for causing such a huge delay. The cause of action for filing this suit arises on the date of registration of sale deed. However, suit has

not filed within 3 years from the date of registration of sale deed. From perusal of plaint knowledge of plaintiff about execution of sale deed of date 1985-1989 is seen and therefore the suit of plaintiff is not within limitation. Hence, he has prayed for rejection of plaint.

4. On contrary learned advocate for plaintiff has filed his reply at Exh.32 and denied the contentions of defendant no.2. According to him, in his plaint at para no.7 and 8, he has given specification that how the plaintiff is entitled to file the suit for declaration, possession, mandatory and permanent injunction. The question of limitation and cause of action arises out of bundle of fact which has been shown by the side of the plaintiff in the suit of the plaintiff. Plaintiff has also paid appropriate court fees. The plaintiff has a good case on merits and has documentary proof to prove the case of plaintiff. From the face of the plaint suit of the plaintiff covers everything and does not come within the domain of order VII Rule 11 of CPC. Defendant no.2 wants to misguide this court by uttering what all should be coming into the evidence and counter evidence of the parties. It is also submitted that this court cannot travel beyond the plaint to look into the allegations leveled by the side of defendant no.2 while deciding application under Order VII Rule 11 of the CPC. Defendant no.2 has no case under Order 7 rule 11 of CPC. Hence, he has prayed for rejection of this application.

5. It is submitted by learned advocate for plaintiff that suit is for plot and not for house. The market value which is submitted by advocate of defendant is for house property. However, the plaintiff in his plaint has prayed for vacant possession of suit plot. Therefore, there is no need to pay court fees stamp on the market value of the house

property. As well as, the sale deed of the year 1985 and 1989 are challenge. In those two sale deeds consideration amount is shown as total of Rs.25,000/- and therefore plaintiff has paid court fees for possession of the land. It is very settled proposition that while deciding application under Order VII Rule 11, only averment in plaint has to be look into. Other documents and written statement of defendants are irrelevant. Hence, considering aforesaid reasons, he has prayed for rejection of this application.

6. Learned advocate for defendant has cited following authorities of Hon'ble Supreme Court and High Court in support of his application.

- i. Uma devi & Others Vs Anand Kumar (2025/5-SCC-198)
- ii. Ravi Bhaskar Wattewar Vs. Babanrao Narbhaji More (2025/4- MHLJ-356)
- iii. Rajendra Zade Vs Harbansingh, Civil revision application no.64 of 2015.
- iv. Dahiben Vs. Arvind Bhai, 2020-7-SCC-366.

7. I have gone through citation filed by learned advocate for defendant. On perusal of these citation it is seen that if the suit has filed beyond period of limitation without explaining delay then such plaint shall be rejected at the first instance. As well as, plaint shall clearly and unequivocally show the cause of action.

8. On the other hand, learned advocate for plaintiff has filed following authority of

- i. Rambhau Vs Jungle & Others(2012) law suit SC 455,
- ii. Condolim Developers private limited Vs. Pravin Grover 2016 law suit BoM 2483,
- iii. Govindra Dada Vs. Filed mining Ispath Ltd. BOM 2009 law suit BOM 1397,
- iv. Chotta bhai Vs Kiritbhai Jai Krishna Bhai Thakkar law suit SC 314.
- v. Kurubaran Vs. P. Narayana & Others, Civil appeal no.5622 of 2025.

9. I have gone through the citations filed by learned advocate for plaintiff. The crux of citation filed at serial no.1 to 4 is that while deciding application under order VII Rule 11, the court should consider plaint only and other documents and written statement of defendant are irrelevant. The crux of citation filed at serial no.5 is that, at the primary stage the averment made in the plaint must be taken at their face value and assumed to be true. Once the date of knowledge is specifically pleaded and forms basis of cause of action, then issue of limitation cannot be decided summarily. It becomes mixed question of law and fact, which cannot be adjudicated at the threshold stage under Order VII Rule 11 of CPC. Therefore, rejection of the plaint on the ground of limitation without permitting the parties to lead evidence, is legally unsustainable.

10. Perused application and say thereon. Heard both sides. I have also gone through citations filed by both sides. The most relevant citation filed by parties is P. Kumar Kurubharan Vs. P. narayana and Others. The facts of that authority and the case before me are similar. It is well settled proposition that while deciding application under order

VII Rule 11, only averment in the plaint should be consider. Thus, it is necessary to see whether on the face value of the plaint the cause of action has arose or not. As well as, the point of limitation also needs to be consider by pleading of plaintiff in his plaint. I have gone through averment in the plaint filed by plaintiff. It is specifically pleaded by plaintiff in his plaint at para no.3 that he had received knowledge about execution and registration of sale deed of dt. 29.04.1985 in the month of June 2017. In plaint para no.5 there is specific pleading that he had received knowledge about execution and registration of sale deed dt. 29.04.1985 and 06.02.1989. It is also pleaded by plaintiff in has plaint that he is resident of Nagpur and therefore he occasionally visited suit plot. In plaint para no.7 also, it is specifically pleaded that the cause of action for filing this suit has arises in the month of June 2017 when plaintiff went to the suit plot, which he had visited occasionally at Karanja Gha. and also arose when he had obtained report from hand writing expert on 14.07.2017. The date of cause of action stated by plaintiff in his plaint is of the month of June 2017. The suit should have filed within period of three years from the date of knowledge about registration of sale deed. Thus, as per averment in plaint the knowledge was received by plaintiff in the month of June 2017 and the present suit was filed on 10.01.2019. It shows that plaint has filed within period of limitation i.e. within 3 years from date of knowledge. Moreover, when there is a specific date of registration of sale deed and it is pleaded that the knowledge was obtained at latter stage then, it becomes a mixed question of fact and law. In such cases of point of limitation cannot be decided at primary stage without giving opportunity of leading evidence to the parties. Therefore, I find that in present suit point of limitation is a mixed question of law and fact and therefore the plaint cannot be

rejected at this primary stage without given opportunity of evidence to the party.

11. As well as, it is seen that the vacant possession of plot has claimed by plaintiff on the basis of declaring the sale deed of dt.29.04.1985 and 06.02.1989 as null and void. The consideration amount in those documents is shown has 10,000/- and 15,000/- which is total of Rs.25,000/-. The vacant possession has prayed by plaintiff in his plaint. In such circumstances it is not justified to rejected the plaint on the ground of undervaluation by stating that market value of construction is beyond jurisdiction of this court. Hence, at this primary stage the plaint cannot be rejected by considering that suit is under valued. Considering aforesaid reason, I find that application of defendant no.2 has no merits at this juncture and therefore, I Pass following order.

ORDER

Application is rejected.

Date: 15.10.2025

(Diksha D. Vighne)
Civil Judge (Jr. Dn.),
Karanja Gha. Dist. Wardha