

MHNS230009292017



Reg.Civil Suit No. 88/2017

Sakhubai Jadhav.

-Vs-

Jayabai Korde & Ors.

Order Below Exh.41

(Passed on this 16th day of July, 2026)

This is the application for rejection of plaint under order 7 rule 11 of the Code of Civil Procedure, 1908(C.P.C. for short).

1. It is submitted by the defendant that, the suit property is a tribal land under Section 36 and 36-A of the Maharashtra Land Revenue Code, 1966. Despite it is mandatory to take permission of the District Collector for transferring the land, without taking such permission plaintiff with the aid of Revenue Officers, Talathi and Mandal Adhikari got entered her name in the record of rights of Gat No. 19 vide Entry No. 58. Thus, defendant challenged such entry vide Appeal No. 31/2014 before Sub-divisional Magistrate which came to be decided on merits on 03/10/2015 and the Entry No. 58 has been set aside. Thereafter, plaintiff challenged this decision before District Collector, Nashik vide Appeal No. 518/2015 which came to be decided on 24/03/2017 and thereby dismissed the appeal and confirmed the Judgment and Order of the Sub-divisional Magistrate. Accordingly, Entry No.58 came to be canceled and the names of defendant came on the 7/12 extract of the Gat No.19. Further, the document based on which the plaintiff has filed this suit is not registered. As no cause of action arose to file this suit and suit suffers from absence of locus standi, the same deserves to be rejected. Further, plaintiff has no concern with the suit property and neither defendant nor their father have ever executed any sort of transaction relating to suit property, the plaintiff has no right to pray for execution of the sale deed. Hence, prayed for rejection of plaint vide order 7 rule 11 of the C.P.C.

2. Plaintiff contested this application by filling her say at Exh. 47 and thereby submitted that, plaintiff and defendant both are Adivasi People and the name of the plaintiff got entered on the 7/12 extract of Gat No. 19 prior to 16 years vide Entry No. 58. Hence, despite of not having any provision, defendants have with the aid of revenue officials removed the name of plaintiff from 7/12 extract by filing delayed appeal. Hence, plaintiff was constrained to file this suit. Further, evidence is yet to be furnished from plaintiff and it would be improper to rejected the plaint without considering the evidence. Further, the document based on which this suit has been filed is yet to come on record. The ancestors of the defendant had never objected to the entry of name of plaintiff over 7/12 extract and never raised any objection or dispute thereto. The legality of document based on which this suit has been filed, is yet to be adjudicated and which can only be adjudicated through the evidence. She further submitted that, she is an old aged tribal lady and as her name got removed from the 7/12 extract after the delay of 16 years she filed this suit. If without giving her an opportunity to lead evidence the plaint came to be rejected, she would suffer irreparable loss which cannot be compensated in terms of money. Further, merely because defendant received favorable judgment and order in RTS appeal defendants have no right to furnish this application under Order 7 Rule 11 of the C.P.C. Hence, prayed for rejection of this application.

3. During the course of argument Ld. Counsel for the defendants Relied on the authority of **DAHIBEN Vs. ARVINDBHAI KALYANJI BHANUSALI (GAJRA) (D) THR LRS & ORS., CIVIL APPEAL No. 9519 OF 2019, DTD. 09 July 2020** wherein Hon'ble Supreme Court of India observed that,

“ When the suit is filed with delay of 5 and half years for cancellation of sale deed on ground of part payment of sale consideration

is liable for rejection of plaint as barred by limitation.”

4. Perused Application and say thereon. Heard both sides at length. I have given my anxious considerations to the plaint and authorities relied on by defendants. It is the theory of the defendant that, the suit property is a tribal land and without taking permission from District Collector plaintiff got her name entered on the 7/12 extract of the suit property vide Entry No. 58. Thereafter, defendant preferred an appeal bearing No. 31/2014 before Sub-divisional Magistrate who passed judgment on 03/10/2015 and thereby canceled Entry No. 58. Later on, plaintiff challenged the decision before District Collector vide Appeal No. 518/2015 who by judgment dated 03/10/2015 confirmed the judgment of Sub-divisional Magistrate and dismissed the appeal. The document based on which the suit has been filed is not registered and as plaintiff has no concern with the suit property she has no right to file this suit. Hence, they are praying for rejection of plaint. It is needless to mention here that, while deciding the application of rejection of plaint the pleadings of the plaint and documents attached therewith only needs to be considered. On bare perusal of the plaint it appears that, it is the theory of the plaintiff the suit property was originally owned by father of the defendant who for his genuine necessity, agreed to sale the suit property to plaintiff an accordingly affidavit before executing Magistrate dated 03/12/1998 came to be executed. This court would like to mention here the transaction executed long back in the year of 1998 and it was between to tribal persons. As on today also majority of the tribal persons are still away from the society and are still ignorant about their legal rights, obligations and consequences for the breach thereof. The plaintiff executed agreement to sale dated 03/12/1998 and possession of the suit property was also handed over to her. Accordingly her name came on the record of rights of the suit property i.e. 7/12 extract. Misunderstandingly, considering herself

to be legal owner and title holder of the suit property by such agreement to sale, she never demanded for execution of the sale deed before the defendant. Thereafter, after the demise of defendant on 08/10/2013 defendant applied for cancellation of Entry No. 58 before the Sub-divisional Magistrate in Appeal No. 31/2014 who by allowing the appeal canceled Entry No. 58. Thereafter, plaintiff challenged the decision before District Collector vide Appeal No. 518/2015 who by judgment dated 03/10/2015 confirmed the judgment of Sub-divisional Magistrate and dismissed the appeal. It clearly implies that, the plaintiff was prosecuting the proceeding before the revenue authorities for considerable longer time. Further, after elimination of name of the plaintiff from record of rights of suit property defendant on 02/07/2017 obstructed her peaceful possession over the suit property. The chief bone of contention of the defendant in this application is as the document based on which this suit has been filed is an unregistered document and as the Entry No. 58 is canceled plaintiff has no locus standi to file this suit. This court would like to mention here that, it was the agreement to sale dated 03/12/1998 by which father of the defendants agreed to sale the suit property. Hence, as it was not the sale deed and simply a agreement to sale, the same is not required to be registered under Section 17(2)(v) of the Indian Registration Act, 1908. Further, on perusal of the Mutation Entry No. 58 of mouje Metchandrachi, Tal. Traymbkeshwar, Dist.Nashik, the execution of agreement to sale is mentioned and for filing of the suit for specific performance of the contract the limitation for filing of the suit is as per section 54 of the Limitation Act is 3 years and which starts from the date fixed for performance or if no such date is fixed from the date of the notice that the performance has been refused. On perusal of the plaint and documents it appears that, there was the agreement and the same has been refused. Also, possession of the plaintiff has also been disturbed. Thus, cause of action to file this suit appears in this case. As far as the

authority of DAHIBEN (Supra) is concerned it is regarding the issue of limitation and this instant application is not based on the ground of bar of limitation and based only on want of cause of action and non registration of agreement to sale. Hence, this authorities not applicable to this case. Hence, on the reasons mentioned above the application deserves to be rejected. Hence, I proceed to pass following order.

Order

Application is rejected.

Date : 16/07/2026
Place : Igatpuri

(Rajkiran U. Ingle)
2nd Joint Civil Judge (Jr.Dn.),
Igatpuri.

CERTIFICATE

I affirm that, the contents of this PDF file are word to word as per original order.

Name of Steno :- S.R.Bhapkar

Name of Court :- 2nd Joint Civil Judge (Jr.Dn.),
Igatpuri.

Date of PDF :- 16.07.2026

Sd/-
Steno