

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9629 OF 2024

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1. Vinayak Pratap Sakhare

2. Chaya Pratap Sakhare

... Petitioners

Vs.

1. Mallikarjun Aashayya Arkal

2. Ku. Nayna Mallikarjun Arkal

3. Akshay Mallikarjun Arkal

4. Sou. Godhavari Ambadas Bhaise

5. Sau. Sharda Ramchandra Bhaise

6. Girish Bhimrao Salunkhe

... Respondents

.....

Mr. Anant Vadgaonkar a/w Sagar P. Patil, Hrishikesh Khupsare for the
Petitioners.

Ms. Gauri Shah i/b Mayuresh Patil for Respondent Nos. 1 to 3.

.....

CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 22nd SEPTEMBER, 2026.

PRONOUNCED ON : 13th OCTOBER, 2026.

P. C. :

1. Heard both sides. Rule. Rule is made returnable forthwith.

2. The petitioners are taking exception to the order dated 12.01.2024 passed below Exh.134 in Special Civil Suit No. 264 of 2010 thereby refusing to reject the plaint by invoking powers under Order VII Rule 11

of the Civil Procedure Code, 1908 (hereinafter referred to as “CPC” for the sake of brevity).

3. The petitioners are subsequently added as defendant nos. 4 and 5 in the suit. The respondent nos. 1 to 3 are the plaintiffs. The respondent nos. 4 and 5 are the original defendant nos. 1 and 2. The respondent no.6 is original defendant no.3. The parties are referred by their original status in the suit.

4. The respondent nos. 1 to 3 – plaintiffs have filed Special Civil Suit No. 264 of 2010 for specific performance of contract and possession originally. The plaintiffs filed Application Exh. 32 to incorporate additional pleadings and prayers in the plaint. It was allowed on 22.01.2015. The sale-deeds executed by defendant nos. 1 and 2 in favour of defendant nos. 4 and 5 are brought on record. Those are prayed to be not binding on plaintiffs.

5. Defendant Nos.4 and 5 had, on an earlier occasion, filed an application at Exhibit-72 under Order VII Rule 11 of CPC. The application was partly allowed. Being aggrieved, Writ Petition No.3130 of 2022 was filed. It was permitted to be withdrawn with liberty to file an application afresh, vide order dated 22.06.2023. Thereafter, the present application at Exhibit-134 was filed, which came to be rejected by the impugned

order.

6. The learned counsel for the petitioner, Mr. Vadgaonkar, submits that the plaint is liable to be rejected because the relief claimed therein regarding declaration in respect of the Sale Deeds is barred by limitation. The doctrine of relation back is not attracted in the present case, and the limitation reckons on 22.01.2015, when the application at Exhibit-32 was allowed. It is submitted that there is no cause of action and that the plaint is liable to be rejected. The registered Sale Deeds impute deemed knowledge to the plaintiffs. The Sale Deed dated 30.06.2008 is executed even prior to the filing of the suit. The findings recorded by the Trial Court in rejecting the application are perverse.

7. Per contra, learned counsel, Ms. Gauri Shah, appearing for the respondents would submit that it is pleaded in the plaint that plaintiffs had no knowledge of alienations. A search report was taken and the alienations were disclosed. The suit is within limitation and cannot be rejected at the threshold. It is submitted that amendment to plaint permitted vide order dated 22.01.2015 relates back to the filing of the suit. The application Exhibit – 134 is not tenable because on earlier occasion also such application was filed and rejected.

8. Having heard litigating sides, it transpires that Special Civil Suit

No. 264/2010 was filed on 04.10.2010 for specific performance of contract and possession. The plaintiffs filed application Exh. 32 seeking amendment to plaint, which was allowed on 22.01.2015. Following three sale-deeds are stated to be not binding upon the plaintiffs :

(1) Sale-deed dated 08.05.2003 executed by defendant nos. 1 and 2 in favour of defendant no. 3.

(2) Sale-deed dated 30.06.2008 executed by defendant nos. 1 and 2 in favour of defendant no. 4.

(3) Sale-deed dated 30.06.2008 executed by defendant nos. 1 and 2 in favour of defendant no. 5

9. It is further pleaded in paragraph no. 8A of the plaint that the plaintiffs acquired knowledge of execution of the registered sale-deeds only after receiving search report, during pendency of the suit. The knowledge of the plaintiffs assumes importance for applying the limitation. I have already taken a view in the matter of **M/s. Sandeep Construction and others Vs. Ashish Balasaheb Thote and others** in Civil Revision Application No. 173/2024, decided on 18.12.2025, by considering Article 59, and various judgments cited and culled down principles in paragraph no. 25, which is as follows:

“25. The survey of the decisions referred above reveals the following principles:

(i) Limitation to challenge registered instrument would ordinarily start running from date on which the instrument was registered.

(ii) If the suit challenging the registered instrument is filed beyond three years from the date of registration that would not ipso facto lead to conclusion to reject the plaint being barred by time. In that case date of knowledge of the registered instrument is relevant one.

(iii) The claim of the plaintiffs with regard to the knowledge of the essential facts giving rise to the cause of action as pleaded will have to be accepted as correct. At the stage of consideration of the application under Order 7 Rule 11 the stand of the defendants in the written statement would be altogether irrelevant.

(iv) If the plaintiff has pleaded date of knowledge attempts made to redress the grievance before rushing to Courts, the issue of limitation becomes mixed question of law and facts which cannot be adjudicated at the threshold stage U/O VII Rule 11 of the C.P.C.”

10. The knowledge of the registered instrument as pleaded in the plaint will have to be accepted for the enquiry under Order VII Rule 11 of the CPC. The further scrutiny into the knowledge and the limitation can be had during the course of trial after adducing evidence of the parties. In that view of the matter, I find no merit in the submissions of the learned counsel for the petitioners that suit is barred by limitation.

11. That application was filed on 08.01.2015. The petitioners were permitted to amend the plaint vide order dated 22.01.2015 passed below Exh. 32. I have gone through the judgment of the Supreme Court in the

matter of **Vishwambhar and others Vs. Laxminarayan (dead) through L.Rs. And another; (2001) 6 Supreme Court Cases 163**. The facts are distinguishable and the observations in paragraph no. 9 of the judgment cannot enure to the benefit of the petitioners. Further reliance is placed on the judgment of the Supreme Court in the matter of **Sampat Kumar Vs. Ayyakannu and another; (2002) 7 Supreme Court Cases 559**. Following is the relevant extract:

“10. An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation-back in the context of amendment of pleadings is not one of universal application and in appropriate cases the court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the court on the date on which the application seeking the amendment was filed. (See observations in *Siddalingamma v. Mamtha Shenoy*².)”

I find that the counsel for the petitioners is justified in contending that in the present matter amendment does not relate back to the filing of the suit but relates back to filing of application Exh. 32. But I have already recorded that the knowledge of the registered instruments plays significant role and the plaint cannot be rejected at the threshold without conducting objective scrutiny.

12. The petitioners have filed suit for specific performance of contract

on the basis of agreement executed on 06.10.2007 by the defendant nos. 1 and 2 in favour of the plaintiffs. The relief of specific performance of contract is within limitation and to that extent suit is maintainable. It is settled legal position that the plaint cannot be rejected for one relief and held to be sustainable for other reliefs. The partial rejection of the plaint is impermissible and for that purpose useful reference can be had in the judgment of **Central Bank of India and another Vs. Prabha Jain and other; (2025) 4 Supreme Court Cases 38.**

13. The earlier application was rejected which was also filed under Order VII Rule 11 of CPC. Against that, writ petition was filed and High Court had permitted the defendant to withdrawn it with liberty to file fresh application. The present application is tenable and submission of learned counsel Ms. Gauri Shah has no merit.

14. I have gone through impugned judgment passed by the Trial Court. No case is made out to reject the plaint at the threshold. The Trial Court has taken reasonable and plausible view.

15. The Writ Petition is dismissed.

(SHAILESH P. BRAHME, J.)