



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 173 OF 2024

M/s Sandeep Construction and
Developer, through its Partners
Sandip Ambadas Shinde and others .. Applicants

Versus

Ashish Balasaheb Thote and others .. Respondents

Shri Anand P. Bhandari, Advocate for the Applicants.
Mrs. A. N. Ansari, Advocate for the Respondent Nos. 1 and 2.

CORAM : SHAILESH P. BRAHME, J.

CLOSED FOR ORDERS ON : 10.12.2025
ORDER PRONOUNCED ON : 18.12.2025

FINAL ORDER :

. Heard both sides finally with their consent at admission stage. The contesting parties are before the Court and it was indicated earlier that revision should be decided finally which was agreed upon by the learned counsels.

2. Applicants are questioning order dated 03.05.2024 passed below Exhibit 21 in R.C.S. No. 1688 of 2022 declining to reject the plaint. The respondent Nos. 1 and 2 are original plaintiffs in R.C.S. No. 1688 of 2022 filed for the relief of partition, separate possession, declaration and injunction.

3. The applicants are original defendant Nos. 11, 10 and 15 respectively. The respondent Nos. 1 to 4 are related *intere-se* which is evident from genealogy mentioned in para No. 2 of the plaint. The subject matter is 09 Acres 45 Guntha land of gut No. 24 situated at village Nakshtrawadi, albeit total area of land is 11H 37R. The parties are referred by their original status in the suit.

4. The plaintiffs are the grand children of the defendant No. 1. The plaintiffs and the defendant Nos. 1 to 4 constitute a branch of which the subject matter is undivided property. It is pleaded in the plaint that defendant No. 1 – Appasaheb was not the exclusive owner of the suit land, but he alienated different parcels of the suit land without there being any legal necessity. It has been specifically mentioned in para No. 3, 9, 17, 20 to 22 that the alienation made by the defendant No. 1 – Appasaheb were bad in law as he was addicted to liquor and did not care for interest of members of the family. The following alienations made by him to other defendants are challenged in the plaint.

- i) The defendant No. 1 sold 61R land to the defendant No. 5 on 16.07.1984.
- ii) The defendant No. 1 sold 1H 21R land to the defendant No. 6 on 16.07.1984.
- iii) The defendant No. 1 sold 01 Acres 05 Guntha land to the defendant No. 7 on 14.10.1993.
- iv) The defendant No. 1 sold 01 Acres land to the defendant

No. 8 on 14.10.1993.

- v) The defendant No. 1 sold 01 Acres land to the defendant No. 9 on 14.10.1993.

5. The purchasers from the defendant No. 1 further alienated the properties to defendant Nos. 10 to 15 by different sale deeds. The alienations are castigated to be without consent of defendant Nos. 2 to 4 and illegal. The defendant Nos. 10 to 15 are stated to be in possession of the land and they are about to develop, sell and alienate the plots thereof. The cause of action is stated to be the knowledge of the plaintiffs on 19.10.2022.

6. The plaintiffs are stated to have paid court fees for the relief of partition, declaration and perpetual injunction. Accordingly, they have prayed for partition, declaration that the sale deeds are not binding upon them and perpetual injunction restraining the defendants from constructing – developing, changing the nature of the suit land and/or creating any third party interest in it.

7. Applicants preferred application Exhibit 21 under Order VII Rule 11 of the Code of Civil Procedure (for the sake of brevity and convenience hereinafter referred as to the “C.P.C.”) for rejection of the plaint, on the ground of want of cause of action, the reliefs are barred by limitation and for not valuing the suit property as per the market price as per Sec. 6(viii) of the Maharashtra Court Fees Act and consequentially for want of

proper court fees. The plaintiffs contested the application. It is contended that they are ready to value the suit properly and to pay the court fees accordingly. By the impugned order application Exhibit 21 was rejected.

8. Learned counsel Mr. Anand Bhandari appearing for the applicants submits that when the alienations were made on 16.07.1984 for the first time the plaintiffs were not born and the part of the suit land ceased to be joint family property. There is no cause to claim relief of partition. Learned counsel would submit that the defendant No. 1 made alienations on 16.07.1984 and 14.10.1993 vide five sale deeds and the suit is filed in the year 2022, which is beyond three years. It is submitted that registration of the sale deeds was a notice U/Sec. 3 of the Transfer of Property Act (for the sake of brevity and convenience hereinafter referred as to the “Act”). The knowledge would be attributable on the date of registration. The right to sue accrued when the sale deeds were registered. The relief of declaration is stated to be clearly barred by limitation. It is submitted that the relief of perpetual injunction is consequential relief and there is no impediment for rejecting the plaint in its entirety.

9. Per contra, Mrs. Ansari, learned counsel for the respondents – plaintiffs supports impugned order. She would submit that all objections regarding the limitation or the maintainability of the suit for partition can be dealt with during the course of trial. She would further submit that the cause of

action for preferring the suit has been specifically stated in para No. 19 of the plaint. It is further submitted that plaintiffs had no knowledge about the alienations and the reasons for that have already been incorporated in the plaint. It is submitted that registration of the sale deeds which are questioned in the suit cannot be said to be starting point of limitation.

10. Before dealing with the rival submissions of the parties a subsequent development needs to be stated. In pursuance of the objection regarding valuation and the court fees ratificational measures are undertaken by the plaintiffs. They have paid court fees as per the market valuation of the lands. It is informed that court fees of Rs. 3,00,000/- has been paid by them. Applicants do not dispute this position. Both the learned counsels therefore have not agitated the ground mentioned in Rule 11(b) and (c) of Order VII of the C. P. C. The reasoning in the impugned order to that extent has become redundant.

11. The defendant No. 1 alienated different parcels of subject matter to defendant Nos. 5 to 9 by registered sale deeds starting from 16.07.1984 to 14.10.1993. Those purchasers further alienated the subject matter to remaining defendants. R.C.S. No. 1688 of 2022 is filed by the plaintiffs on 01.12.2022. The title clause of the plaint shows that at the time of filing of the suit plaintiff No. 1 – Ashish was 17 years and plaintiff No. 2 – Ashwini was of 14 years old. An inference is that the plaintiff No. 1 might have been born in the year 2005 and the plaintiff No.

2 in the year 2008. The alienations made by the defendant No. 1 are prior to their birth. Those parcels of the suit land ceased to be joint family properties before their birth. Other members of the family did not challenge the alienations. Therefore it is rightly contended by Mr. Bhandari, learned counsel for the applicants that plaintiffs can have no right to sue for partition, albeit, they have a birth right in the joint family property. Apparently, the relief of partition claimed by the plaintiffs is unsustainable.

12. It is trite law that the plaint cannot be rejected partially to the extent of reliefs or properties or the parties. A useful reference can be made to the law laid down by the Supreme Court in the matter of Central Bank of India and another Vs. Smt. Prabha Jain reported in *2025 INSC 95*. This court needs to inquire into the claim of rejection of plaint in respect of relief of declaration and injunction.

13. My attention is adverted to Sec. 03 of the Transfer of Property Act. Relevant extract is as follows :

The Transfer of Property Act, 1882

1. ...
2. ...
3. **Interpretation clause .--**

...

¹⁷ [“a person is said to have notice”] of a fact when he actually knows that fact, or when, but for willful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I.—Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, ² [where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated]:

Provided that—

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908) and the rules made thereunder,

(2) the instrument ³ [or memorandum] has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II.—Any person acquiring any immoveable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III.—A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material:

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud.]

14. On the strength of above provision it is tried to be contended by learned advocate Mr. Bhandari that registration of document is notice not only to the plaintiff, but public at large. The knowledge of the sale transaction is attributable to the date of registration. Reliance is placed on the judgment of the Supreme Court in the matter of Smt. Uma Devi and others Vs. Anand Kumar and others reported in *2025 INSC 434*. In that case plaintiff had filed suit for partition in the year 2023 without challenging registered sale deeds executed in the year 1978. In paragraph No. 12 of the judgment of the Apex Court reference is made to earlier judgment in the matter of Suraj Lamp Industries Pvt. Ltd. Vs. State of Haryana and another reported in *(2012) 1 SCC 656* laying down that registration of document gives notice to the world that such document has been executed. Thereafter following observations are made in para No. 13.

13. Applying this settled principle of law, it can safely be assumed that the predecessors of the plaintiffs had notice of the registered sale deeds (executed in 1978), flowing from the partition that took place way back in 1968, by virtue of them being registered documents. In the lifetime of Mangamma, these sale deeds have not been challenged, neither has partition been sought. Thus, the suit (filed in the year 2023) of the plaintiffs was prima facie barred by law. The plaintiffs cannot reignite their rights after sleeping on them for 45 years.

15. Followed by para No. 14 which also refers to judgment in the matter of Shri Mukund Bhavan Trust and others Vs. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and another reported in *2024 SCC OnLine SC 3844*, wherein Sec. 03 of the Act was referred.

Ultimately, it was held that suit was barred by law and plaint was liable to be rejected.

16. The facts before the Supreme Court are distinguishable. In that case by-passing the relief of declaration challenging the registered instruments, suit for partition was filed, whereas in the case at hand plaintiffs have not only challenged the registered sale deeds by seeking declaration, but have also paid the court fees. In the case at hand the plaintiffs have come up with specific theory of addiction of their grandfather, the defendant No. 1 and selling of the lands at marginal rates. Other family members did not consent for the alienations. These facts make whole of the difference. I am of the considered view that the judgment cited by the applicants will not help them.

17. In the plaint it has been categorically stated in para Nos. 17, 18, 20 to 22 that defendant No. 1 had alienated the suit lands at very low prices to satisfy his addiction and there was absolutely no legal necessity. Other family members did not consent for the alienations. They have pleaded knowledge very specifically in following manner.

“22. The Plaintiffs submit that, there was the family dispute between the mother of the plaintiffs and the defendant no. 4, therefore, she inquired about the suit property and collected all the documents and also asked about the share of the plaintiffs to the defendant no. 1 and 4 on 19th October, 2022. They told that, they have already sold the property. Therefore, cause-of-action arose to file the suit on 19-10-2022.”

18. The cause of action has been specifically spelt out in the plaint. In the backdrop of the family dispute between the parents of the plaintiffs, there is every reason to infer that on 19th October, 2022, they might have learnt for the first time the need to approach Court of law. The limitation reckons from 19.10.2022. Plaintiffs are the children, who are the sufferers not only at the hands of their parents, but sufferers due to the conduct of elderly members in the family. These facts need to be gone into during the full fledged trial. Implication of Sec. 3 of the T. P. Act can also be dealt with in trial. At the threshold in an inquiry U/O VII Rule 11 of the C. P. C. Trial Court or the High Court cannot come to the conclusion that the sale deeds were registered before 29 years and, therefore, suit is barred by limitation.

19. The plaintiffs have paid court fees on the market value of the land under alienations. They are seeking cancellation of the instruments. Present case is covered by Article 59 of the Limitation Act and not by Article 58 of the Limitation Act, which is as follows :

<i>Description of suit</i>		<i>Period of limitation</i>	<i>Time from which period begins to run</i>
59.	To cancel or set aside an instrument of decree or for the rescission of a contract.	Three years	When the fact entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.

20. The cause of action which is bundle of facts stated in

paragraph Nos. 17, 18, 20 to 22 of the plaint, unequivocally show that 19.10.2022 is the date from which period of limitation begins. Going by the meaningful reading of the plaint, the knowledge of sale deeds cannot be attributed to plaintiffs prior to 19.10.2022. Not in all cases the registration of the instrument can be said to be starting point of limitation. If the arguments of Mr. Bhandari are accepted, then the law of limitation will prove to be oppressive and harsh.

21. It is relevant to take into account few judgments of the Supreme Court delivered in the recent past for rejection of plaint on the plea of limitation based upon registration of the instrument. In the matter of Chhotanben and another Vs. Kiritbhai Jalkrushnabhai Thakkar and others reported in *(2018) 6 SCC 422*, the same question fell for consideration before three Judges Bench. In that case the plaintiffs and the defendant Nos. 1 and 2 inherited the property. The defendant Nos. 1 and 2 fraudulently transferred the share of the plaintiffs vide sale deed dated 18.10.1996 to defendant Nos. 4 to 6. The information was gathered by plaintiffs that the sale deed was executed by the forged thumb impression. The suit was filed in the year 2013 seeking declaration and injunction. The application U/O VII Rule 11(d) of the C. P. C. was rejected by the Trial Court. Being aggrieved, the defendant No. 1 approached High Court, which allowed the application and rejected the plaint. The same was subjected to challenge before the Supreme Court. Appeal was allowed by the Supreme Court. Following are the relevant

observations :

14. After having cogitated over the averments in the plaint and the reasons recorded by the Trial Court as well as the High Court, we have no manner of doubt that the High Court committed manifest error in reversing the view taken by the Trial Court that the factum of suit being barred by limitation, was a triable issue in the fact situation of the present case. We say so because the appellants (plaintiffs) have asserted that until 2013 they had no knowledge whatsoever about the execution of the registered sale deed concerning their ancestral property. Further, they have denied the thumb impressions on the registered sale deed as belonging to them and have alleged forgery and impersonation. In the context of totality of averments in the plaint and the reliefs claimed, which of the Articles from amongst Articles 56, 58, 59, 65 or 110 or any other Article of the Limitation Act will apply to the facts of the present case, may have to be considered at the appropriate stage.

15. What is relevant for answering the matter in issue in the context of the application under Order VII Rule 11(d), is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order VII Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18th October, 1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellants (plaintiffs) is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers - original defendant Nos.1 & 2, in favour of Jaikrishnabhai Prabhudas Thakkar or defendant Nos.3 to 6. They acquired that knowledge on 26.12.2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original defendant Nos.1 & 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (1/2) portion of the land so designated towards their share. However, when

they realized that the original defendant Nos.1 & 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the Trial Court opined that it was a triable issue and declined to accept the application filed by respondent No.1 (defendant No.5) for rejection of the plaint under Order VII Rule 11(d). That view commends to us.”

22. Similar issue fell for consideration in the matter of **Daliben Valjibhai and others Vs. Prajapati Kodarbhai Kachrabhai and another** reported in *2024 SCC OnLine SC 4105*. In that case also plaintiff had filed suit on 10.04.2017 for cancellation of registered sale deed executed on 04.12.2004. It was sought to be rejected U/O VII Rule 11 of the C. P. C. The Trial Court allowed the application, which was reversed by the District Court. Then High Court allowed the same in second appeal, which is reversed by the Supreme Court. In that case High Court is held to have gone into other aspects of the matter, which was extraneous for the inquiry U/O VII Rule 11 of the C. P. C. The findings of the High Court, which are found to be objectionable are recorded in para No. 7 of the judgment. Following are the relevant extracts of the Supreme Court.

“9. Having considered the judgment of the High Court in detail, we are of the opinion that the findings of the High Court are primarily factual. The High Court seems to have got carried away by the fact that the suit was filed 13 years after the execution of the sale deed. The question is whether the plaintiffs had the knowledge of the execution of the sale deed. The High Court expected that the plaintiffs must have given meticulous details of the fraud perpetuated in the plaint itself.

10. The First Appellate Court came to the conclusion that the defendants made an application for correcting the revenue records only in the year 2017 and on the said application the Deputy Collector issued notice to the plaintiffs in March 2017 and that was the time when the plaintiffs came to know about the execution of the sale deed. It is under these circumstances that the suit was instituted in the year 2017. While the High Court came to the correct conclusion that under Article 59 of the Limitation Act, a suit can be instituted within 3 years of the knowledge, it proceeded to return a finding that in cases where the document is registered, the knowledge must be presumed from the date of registration.

11. This Court had to deal with a similar situation in *P.V. Guru Raj Reddy v. P. Neeradha Reddy*¹. A suit instituted by the plaintiff in the year 2002 for cancellation of sale deed of year 1979 on the ground that the knowledge of fraud was acquired only in 1999, was objected to by the defendant in an application under Order 7 Rule 11 on the ground that it is barred by limitation. This Court held:

“5. Rejection of the plaint under Order 7 Rule 11 of CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.

6. In the present case, reading the plaint as a whole and proceeding on the basis that the averments made therein are correct, which is what the Court is required to do, it cannot be said that the said pleadings ex facie disclose that the suit is

barred by limitation or is barred under any other provision of law. 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.”

23. Hon’ble Apex Court referred to the judgment of Three Judges Bench in the matter of Chhotanben and another Vs. Kiritbhai Jalkrushnabhai Thakkar and others (supra) and ultimately held that High Court was not justified in allowing application U/O VII Rule 11 of the C. P. C. as the limitation period did not commence from the date of registration.

24. In the latest judgment of the Supreme Court in the matter of P. Kumarakurubaran Vs. P. Narayanan and others reported in *2025 INSC 598*, the plaintiff had filed suit bearing O. S. No. 310 of 2014 for declaration and injunction challenging the registered sale deed dated 10.10.1988 on the ground that it was being executed fraudulently by father of the plaintiff taking disadvantage of the power of attorney. The attempts made by the plaintiff by approaching police in the year 2011 under the land grabbing cell and thereafter Tahsildar were pleaded in the plaint. The application U/O VII Rule 11 of the C. P. C. was rejected by the Trial Court, which was allowed by the High Court in the revision. Ultimately while reversing the order of the High Court the Supreme Court relied upon the judgment in the matter of Daliben Valjibhai and others Vs. Prajapati Kodarbhai Kachrabhai and another

(supra). Following are the relevant observations :

“11. It is well-settled that Article 59 of the Limitation Act, 1963, governs suits seeking cancellation of an instrument and prescribes a period of limitation of three years from the date when the plaintiff first had knowledge of the facts entitling him to such relief. The emphasis under Article 59 is not on the date of the transaction per se, but on the accrual of the cause of action, which, in cases involving allegations of fraud or unauthorized execution of documents, hinges upon the date on which the plaintiff acquired knowledge of such facts.

12. In the present case, the appellant has specifically averred in the plaint that upon becoming aware of registration of documents allegedly carried out among the defendants in relation to the suit property, he immediately approached the Additional Commissioner of Police, Chennai and lodged a land grabbing complaint on 09.12.2011 against the family of Defendant No.1. Subsequently, he applied for patta in his favour on 24.02.2012, and raised objections on 05.03.2012 to Defendant No. 4 stating that the suit property belonged to the plaintiff and that no registration concerning the same should be carried out. He has also submitted an objection petition to Defendant No. 5 requesting that no planning permit be granted to anybody except the appellant in respect of the suit property. Thereafter, the appellant instituted the suit on 03.12.2014 seeking a declaration and consequential reliefs. On the other hand, the respondents / defendants stated in their application filed under Order VII Rule 11 CPC that the appellant had knowledge of the execution of the sale deed by his father in favour of Defendant No.1 at the earliest point of time and hence, the suit instituted by the appellant was barred by limitation. While the trial Court rejected the said application holding that the issue of limitation involved a mixed question of law and fact, the High Court in revision, took a contrary view and allowed the application filed under Order VII Rule 11 CPC and rejected the plaint solely on the ground that the suit was barred by limitation.

12.1. However, we are of the considered view that the issue as to whether the appellant had prior notice or reason to be aware of the transaction at an earlier point of time, or whether the plea regarding the date of knowledge is credible, are matters that necessarily require appreciation of evidence. At this preliminary stage, the averments

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 the basis of the cause of action, the issue of limitation cannot be decided summarily. It becomes a mixed question of law and fact, which cannot be adjudicated at the threshold stage under Order VII Rule 11 CPC. Therefore, rejection of the plaint on the ground of limitation without permitting the parties to lead evidence, is legally unsustainable.”

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.

26. In the case in hand the issue of limitation is mixed question of law and facts. The revision application sans merit and it is dismissed.

[SHAILESH P. BRAHME J.]

27. After pronouncement of the judgment, learned counsel for the applicants seeks continuation of the interim relief which was granted on 26.11.2024.

28. The request is opposed by the respondents.

29. The suit is of the year 2023. The issues are settled. No prejudice will be caused to the applicants even if suit proceeded further. The rejection of stay is permitted at any stage of the proceedings though applicants are desirous to approach the Apex Court. I am of the considered view that further stay to the proceedings is not warranted.

30. The request is rejected.

[SHAILESH P. BRAHME J.]

bsb/Dec. 25