

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION No. 1949 Of 2025

IN

SUIT (LODG.) No. 6763 of 2025

Mantri Building Condominium

....Applicant/
Orig. Defendant No.1

In the matter between :

Neeraj Sharad Gangla & Ors.

....Plaintiffs

: *Versus* :

Mantri Building Condominium & Ors.

....Defendants

ALONGWITH

SUIT (LODG.) NO. 6763 OF 2025

Neeraj Sharad Gangla & Ors.

....Plaintiffs

: *Versus* :

Mantri Building Condominium & Ors.

....Defendants

Mr. Kunal Kumbhat, for the Plaintiffs.

Mr. Mayur Khandeparkar, with Mr. Anish Karande, Mr. Arpit Solanki, Mr. Siddharth Bafna and Mr. Pulkit Tiwari i/b. Integrum Legal, for the Applicant in IA-1949-2025 and for Defendant Nos.1 to 6, 10 to 12, 16 to 18, 20 to 22 and 24 to 27.

Mr. Bhavin Gala with Mr. Hitesh Solanki i/b. Manoj & Ashok Associates, for Defendant No.32.

CORAM : SANDEEP V. MARNE, J.

JUDGMENT RESD ON : 10 OCTOBER 2025.

JUDGMENT PRON. ON : 17 OCTOBER 2025.

JUDGMENT :

1) Defendant No.1-Condominium has filed the present Application seeking rejection of Plaint under the provisions of Order VII Rule 11 of the Civil Procedure Code, 1908 (**the Code**). According to Applicant-Defendant No.1, the Suit is hopelessly barred by limitation as the same challenges Declaration dated 1 October 2004 and Deeds of Apartment dated 4 November 2004, 6 November 2004, 10 November 2004 and 6 October 2005 and Deeds of Transfer dated 1 February 2005.

2) Plaintiffs' case as pleaded in the Plaint is that they are children of late Mr. Sharad Madhavrao Gangla. By an Indenture dated 22 March 1921, Bombay Improvement Trust granted lease of land admeasuring 732.45 sq.mtrs bearing Plot No.61, Scheme No.4 of Gamdevi Estate and Cadastral Survey No.1655 of Girgaon Division together with building thereon known as 'Mantri Building' comprising of ground plus two upper floors and having 17 units (*16 residential units and one commercial unit*) situated at Street No.56, Gamdevi Road, Mumbai-400 007 in favour of Mr. Ramchandra Bhaskar Mantri. The lease was granted for a term of 999 years commencing from 4 November 1916. By Deed of Assignment dated 18 May 1925, said Mr. Ramchandra Bhaskar Mantri and others assigned and transferred leasehold rights in the land and the building in favour of Plaintiffs grandfather Mr. Madhavrao Vithalrao Gangla.

3) According to the Plaintiff, the land and the building was always joint family property and under Deed of Partition dated 18 December 1940 executed between great grandfather (*late Vithalrao Sambhaji Gangla*), grandfather (*late Madhavrao Gangla*) and father of the Plaintiffs (*Sharad Gangla*) and other family members, undivided half share and interest in the entire land and building was granted in favour

of Plaintiffs' great grandfather, grandfather and father. According to the Plaintiffs, after the death of great grandfather in the year 1945, the grandfather and father of the Plaintiffs became jointly entitled to half share in the land and the building, which continued to remain a joint family property. According to the Plaintiffs, after they were born in the year 1962 (*Plaintiff No.2*), 1963 (*Plaintiff No.3*) and 1974 (*Plaintiff No.1*), they became entitled to share in the joint family property by birth. After the death of the Plaintiffs grandfather in the year 1977, according to the Plaintiffs, Plaintiff No.1 alongwith his father became entitled to half share in the land and the building.

4) It appears that, 16 out of the 17 units in Mantri Building were occupied by tenants. Defendant Nos.2 to 31 and their predecessor in title were the tenants in respect of the Mantri Building. Plaintiff's father-Sharad Madhavrao Gangla agreed to convert tenancies into ownership rights and accordingly executed Declaration in terms of Form-A under the Maharashtra Apartment Ownership Act, 1970 (**MAO Act**) on 1 October 2004 thereby purportedly conferring ownership rights in favour of Defendant Nos.2 to 31. According to the Plaintiffs, the said act of execution of Declaration dated 1 October 2004 is performed by their father without the knowledge and consent of Plaintiffs, who are entitled to shares in the land and building. According to the Plaintiffs, Plaintiff No.1 has 50% share in the land and building and without his consent, Declaration dated 1 October 2004 could not have been executed. According to the Plaintiffs, without their knowledge and consent, their father also executed Deeds of Apartment with Defendant Nos.2 to 28 and Deeds of Transfer with Defendant Nos.29, 30 and 31 portraying himself as the sole owner. This is how in respect of the 15 units in the building, Deeds of Apartments/Transfers have been executed and the 16th unit was retained by Plaintiffs father.

5) According to the Plaintiffs, they learnt about execution of declaration as well as Deeds of Apartment and Deeds of Transfer for the first time in January 2024 after they were supplied draft of Development Agreement. A Development Agreement dated 28 July 2024 has been executed by Defendant Nos.1 to 31 in favour of Defendant No.32-Developer.

6) Plaintiffs have accordingly filed the present Suit seeking following prayers :-

a. This Hon'ble Court be pleased to declare that the Declaration titled 'Form A' dated 01/10/2004 and all other documents executed by Sharad Madhavrao Gangla submitting the property being land admeasuring 732.45 sq. meters equivalent to 876 square yards bearing Plot No. 61, Scheme No.4 of Gamdevi Estate and Cadastral No. 1655 of Girgaon Division together with building/structures known as "Mantri Building" comprising of ground plus 2 upper floors having 17 units and situated at Gamdevi Road, Mumbai 400007, to the provisions of Maharashtra Apartment Ownership Act 1970 are void and not binding on the Plaintiffs;

b. This Hon'ble Court be pleased to declare that all the 15 Deeds of Apartment dated 04/11/2004, 06/11/2004, 10/11/2004, 06/10/2005 annexed to the present Plaint at Exhibits H to V respectively, executed by Sharad Madhavrao Gangla with Defendant Nos. 2 to 28 are void and not binding on the Plaintiffs;

c. This Hon'ble Court be pleased to declare that both the Deeds of Transfer dated 01/02/2005 annexed to the present Plaint at Exhibits W & X respectively executed by Sharad Madhavrao Gangla with Defendant Nos. 29 to 31 are void and not binding on the Plaintiffs;

d. This Hon'ble Court be pleased to declare that the Development Agreement dated 28/07/2024, annexed to the present plaint at Exhibit Y, executed by and between the Defendants is void and not binding on the Plaintiffs;

e. Pending the hearing and disposal of the present suit, this Hon'ble Court be pleased to restrain the Defendants, their agents, officers or any other person acting for or on their behalf from giving effect to or acting upon the Declaration titled 'Form A' dated 01/10/2004 and/or any other document(s) executed by Sharad Madhavrao Gangla submitting the property being land admeasuring 732.45 sq. meters equivalent to 876 square yards bearing Plot No. 61, Scheme No.4 of Gamdevi Estate and Cadastral No. 1655 of Girgaon Division together with building/structures known "Mantri as Building" comprising of ground plus 2 upper floors having 17 units and situated at Gamdevi

Road, Mumbai-400007 to the provisions of Maharashtra Apartment Ownership Act 1970;

f. Pending the hearing and final disposal of the present suit, this Hon'ble Court be pleased to restrain the Defendants, their agents, officers or any other person acting for and or on their behalf from giving effect to or acting upon or applying to any authority for any approval on the basis of Development Agreement dated 28/07/2024 executed by and between Defendant Nos. 1-32 and annexed herewith at Exhibit - Y;

g. Pending the hearing and final disposal of the present suit, this Hon'ble Court be pleased to restrain the Defendants, their agents, officers or any other person acting for and or on their behalf from creating any third party rights, title or interest in respect of the property being land admeasuring 732.45 sq. meters equivalent to 876 square yards bearing Plot No. 61, Scheme No.4 of Gamdevi Estate and Cadastral No. 1655 of Girgaon Division together with building/structures known as "Mantri Building" comprising of ground plus 2 upper floors having 17 units and situated at Gamdevi Road, Mumbai 400007, and or any units or areas therein;

h. Interim and ad-interim reliefs in terms of prayer clauses (d) and (e);

i. Costs

j. Such other and further reliefs as this Hon'ble Court deems fit and appropriate in the facts and circumstances of the present case.

7) Defendant No.1 is a Condominium and an Association of Apartments registered under the provisions of the Maharashtra Apartment Ownership Act, 1970 formed by defendant Nos.2 to 31. Defendant No.1-Condominium has filed the present Application seeking rejection of Plaint under Order VII Rule 11 of the Code on the ground that the suit being hopelessly time barred. Plaintiffs have filed Affidavit-in-Reply opposing the Interim Application. Since the pleadings in the Interim Application are complete, the same is taken up for hearing and decision with the consent of the learned counsel appearing for the parties.

8) Mr. Khandeparkar, the learned counsel appearing for the Defendant No.1/Applicant would submit that cause of action for filing the present Suit arose on 1 October 2004 when Declaration was

executed by father of the Plaintiffs. That the same arose again on execution of Deeds of Apartment dated 4 November 2004 and lastly on 1 February 2005 when the Deeds of Transfer were executed by Plaintiff's father. That therefore the present Suit filed by the Plaintiffs on 28 February 2025 is hopelessly barred by limitation. He would submit that Plaintiff's case, as pleaded in the Plaint, is that the joint family property is alienated by their father without their consent or knowledge. That therefore the Suit, at best, would be governed by the provisions of Section 109 of the Limitation Act, 1963 (**Limitation Act**) under which the limitation for filing the suit is 12 years from the date of handing over of possession of the alienated property to the alienee. Inviting the court's attention to the covenants of the Deeds of Apartment, Mr. Khandeparkar would submit that the Deeds of Apartment record factum of handing over of possession of each apartment simultaneously with execution thereof. That therefore the Suit ought to have been filed within a period of 12 years from the date of execution of either Declaration dated 1 October 2004 or Deeds of Apartment dated 4 November 2004, 6 November 2004, 10 November 2004 and 6 October 2005. He would submit that the Suit cannot be held to be governed by Article 59 of the Limitation Act which applies to a normal suit filed seeking setting aside an instrument. That the Suit has been filed specifically for the purpose of enforcing share in the joint Hindu family property and what is challenged is alienation of alleged joint family property by the father. That therefore the Suit would be governed by the provisions of Section 109 of the Limitation Act.

9) Mr. Khandeparkar would further submit that the Declaration dated 1 October 2004, the Deeds of Apartment dated 4 November 2004 6 November 2004, 10 November 2004 and 6 October 2005 and Deeds of Transfer dated 1 February 2005 are registered instruments. He would rely upon judgment of the Apex Court in *Shri*

Mukund Bhavan Trust and Others Versus. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and Another¹ in support of his contention that when a document is registered, the date of registration becomes the date of deemed knowledge. In support of the same contention, he also relies on the judgment of the Apex Court judgment in Uma Devi and Others Versus Anand Kumar and Others². Mr. Khandeparkar would further submit that the period of limitation began running from the dates of execution of Declaration, Deeds of Apartment and Deeds of Transfer and that the same has not been interdicted by any event recognized in Part-III of the Limitation Act. Referring to the provisions of Order VII Rule 6 of the Code, Mr. Khandeparkar would submit that if exemption from limitation law is claimed, the Plaintiff must show the grounds upon which such exemption from normal limitation period is claimed. He would rely on judgment in Santosh Devi Versus Sunder³. That in the present case, the Plaintiff does not contain any averment as to how any of the exemptions under Part-III of the Limitation Act are applicable to the present case where the limitation started running from the dates of execution of Declaration, Deeds of Apartment and Deeds of Transfer. Mr. Khandeparkar would submit that the Suit is hopelessly barred by limitation and that the Defendants cannot be made to undergo the ordeal of trial. He would submit that Plaintiffs always had knowledge about execution of Declaration, Deeds of Apartment and Deeds of Transfer and have strategically filed the present Suit with a view to stall redevelopment of the building. That Plaintiffs are now owner of only one unit in the building which is rented out to Commissioner of Police. That since Plaintiffs are opposed to redevelopment of the building and since they cannot go against the majority wish of other apartment owners, the present Suit is filed with malafide objective of stalling the redevelopment

¹ 2024 SCC ONLINE 3844

² 2025 (5) SCC 198

³ 2025 SCC ONLINE SC 1808

process. He would accordingly pray for rejection of Complaint under Order VII Rule 11 of the Code.

10) The application is opposed by Mr. Kumbhat, the learned counsel appearing for the Plaintiffs. He would submit that the Suit is filed for setting aside Declaration, Deeds of Apartment and Deeds of Transfer and that therefore the same is governed by the provisions of Article 59 of the Limitation Act. That under Article 59, the period of limitation starts running only from the date of acquisition of knowledge of execution of impugned instrument. That in the present case, Complaint specifically contains an averment that Plaintiffs acquired knowledge of execution of Declaration, Deeds of Apartment and Deeds of Transfer for the first time in January 2024. That therefore the Suit is filed within the period of 3 years from the date of acquisition of such knowledge and that the same is therefore perfectly within limitation. He would submit that it is well settled position that while deciding Application under Order VII Rule 11, only averments in the Complaint are required to be taken into consideration. That therefore as of now, the Court must consider specific averment in para-35 of the Complaint in which Plaintiff has averred acquisition of knowledge of execution of the impugned Deeds for the first time in January 2024.

11) Mr. Kumbhat would further submit that the suit land and building being joint family property, the same would not have been alienated by father without the knowledge and consent of the Plaintiffs. That the Suit land and building is a mere leasehold property and that execution of a Declaration or Deeds of Apartments is impermissible under the MAO Act in respect of leasehold property. That MAO Act envisages declaration of percentage of ownership in the land by each apartment owner. That such declaration cannot be executed in respect of leasehold property. That therefore execution of Declaration, Deeds of

Apartment and Deeds of Transfer are *ex-facie* illegal and liable to be set aside. Mr. Kumbhat would submit that none of the judgments relied upon by Mr. Khandeparkar have any remote application to the facts of the present case as the affected parties therein were either signatories to the instruments or were aware about execution thereof. That in the present case, Plaintiffs are neither signatories to the impugned instruments nor were aware of their execution. That as of now, the averment in the Plaint about acquisition of knowledge of execution of instruments in January 2024 needs to be accepted and that Defendants' defence of knowledge prior to January 2024 is irrelevant at this stage, which is also subject matter of evidence.

12) Mr. Kumbhat would further submit that in Suit governed by Article 59 of the Limitation Act, that the date of knowledge about execution of impugned instrument is important. That it is Plaintiff's case that the father has alienated the property on the misrepresentation that he was the sole owner. That the Suit is not for enforcement of a right in joint family property for being governed by Article 109 of the Limitation Act. According to the Plaintiffs, the entire act of execution of Declaration, Deeds of Apartment and Deeds of Transfer are void as the same are performed on a misrepresentation that the father was the sole owner. That Article 109 of the Limitation Act applies only when joint family property is alienated by Karta of the family. That father has not executed the impugned instrument in his capacity as Karta. That therefore the Suit would be governed by the provisions of Article 59 of the Limitation Act. That the argument of possession being handed over on the date of execution of Deeds of Apartment is fallacious as Defendant Nos.2 to 31 were already tenants in occupation of their respective premises and that therefore there was no question of handing over possession of any of the units. In support of his contention that suit can be filed challenging an instrument of transfer of property within

three years of acquisition of knowledge of execution of instrument, Mr. Kumbhat would rely upon judgment of the Apex Court in Abdul Rahim and Others Versus. S.K. Abdul Zabbar and Others⁴. He would rely upon judgment of this Court in Vijay Shridhar Ghare Versus. Ashok Narayan Shinde⁵ in support of his contention that Articles 109 and 110 of the Limitation Act come into play only when suit is filed for enforcement of right by a member of joint family. That in the present case, Plaintiffs are aggrieved by the redevelopment process undertaken by Defendant Nos.1 to 31 by relying upon Declaration, Deeds of Apartment and Deeds of Transfer which are *ex-facie* void. That the Suit is not for enforcement of share in the suit property and that therefore provisions of Articles 109 and 110 of the Limitation Act have no application to the present case. He would also rely upon judgment of the Apex Court in Deccan Paper Mills Co. Ltd. Versus. Regency Mahavir Properties and Others.⁶ He would submit that the issue of limitation would otherwise be a mixed question of law and fact and cannot be decided at this stage of the suit, before leading evidence. He would submit that the issue of limitation can be framed and decided by the Court while deciding the Suit. He would therefore pray for rejection of the Application.

13) Rival contentions of the parties now fall for my consideration.

14) The short issue that arises for consideration while deciding the present Application for rejection of Plaint under Order VII Rule 11 of the Code is the exact Article of Limitation Act by which the Suit would be governed. The Suit has been filed for setting aside Declaration dated 1 October 2004, Deeds of Apartment dated 4 November 2004, 6 November 2004, 10 November 2004 and 6 October 2005 and Deeds of

⁴ CIVIL APPEAL NO. 1573 OF 2009 DECIDED ON 6 MARCH 2009

⁵ 2025 DGLS BOM. 2091

⁶ CIVIL APPEAL NO. 5147/2016 DECIDED ON 19 AUGUST 2020.

Transfer dated 1 February 2005. Though Plaintiffs have also challenged Development Agreement dated 28 July 2024, their real grouse is subjecting the land and building to the provisions of the MAO Act by their father. Plaintiffs believe that the suit land and building is a joint family property, in which Plaintiffs have share and that therefore the same could not have been subjected to the provisions of the MAO Act unilaterally by the father without their consent. Thus, the main challenge in the Suit is the instruments effected in the years 2004-2005, by which the suit property has been subjected to the provisions of the MAO Act thereby making Defendant Nos. 2 to 31 (*erstwhile tenants*) as owners of their respective units. Therefore, challenge to the Development Agreement dated 28 July 2024 would ultimately hinge around Plaintiffs ability to get the Declaration, Deeds of Apartment and Deeds of Transfer set aside.

15) According to Defendant No.1, Plaintiffs' suit is for setting aside alienation of alleged joint family property by the father and accordingly the Suit would be governed by the provisions of Article 109 of the Limitation Act, prescribing period of limitation of 12 years from the date of taking over possession of alienated property by the alienee. Article 109 of the Limitation Act provides thus :-

Description of Suit	Period of Limitation	Time from which period begins to run
By a Hindu governed by Mitakshara law to set aside his father's alienation of ancestral property	Twelve Years	When the alienee takes possession of the property.

16) Thus, a Suit by a Hindu governed by Mitakshara law to set aside his father's alienation of ancestral property is required to be filed within a period of 12 years after the alienee takes possession of the property. According to Defendant No.1, the Suit therefore ought to have

been instituted within a period of 12 years from date of taking over of possession of the suit property by Defendant Nos.2 to 31. According to Defendant No.1, the possession of the respective premises was handed over simultaneously with execution of Deeds of Apartment dated 4 November 2004, 6 November 2004, 10 November 2004 and 6 October 2005. It is therefore contended that the suit ought to have been filed within 12 years from 4 November 2004, 6 November 2004, 10 November 2004 or 6 October 2005. This is how Defendant No.1 believes that the Suit instituted by the Plaintiffs on 28 February 2025 is hopelessly barred by limitation.

17) On the other hand, it is the contention of the Plaintiffs that the Suit would be governed by the provisions of Article 59 of the Limitation Act, which provides thus :-

Description of Suit	Period of Limitation	Time from which period begins to run
To cancel or set aside an instrument decree or for the re-scission of a contract.	Three Years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.

18) Thus, for cancellation or setting aside of an instrument, the Suit needs to be filed within a period of 3 years from the facts entitling the Plaintiffs to have the instrument cancelled or set aside, first become known to him. According to the Plaintiffs, challenge to the Declaration, Deeds of Apartment and Deeds of Transfer is nothing but a prayer for cancellation or setting aside an instrument within the meaning of Article 59 of the Limitation Act. Plaintiffs further claim that in para-35 of the Plaint, they have disclosed the date of acquisition of knowledge of execution of the impugned Declaration, Deeds of Apartment and Deeds of Transfer in January 2024. Para-35 of the Plaint reads thus :-

35 .The Plaintiffs state that they gained knowledge of execution of Declaration in terms of Form A dated 01/10/2004 as well as the Deeds of Apartments and Deeds of Transfer for the first time on receiving the draft of development Agreement in the month of January 2024 and subsequently only after a search was taken in the office of MHADA in respect of the documents filed for the said property in the month of February, 2024. The Development Agreement challenged by the present suit is executed on 28/07/2024. Hence, the present suit came to be filed within the limitation period and no part thereof is time barred.

19) According to the Plaintiffs therefore the period of limitation for filing the present Suit is 3 years and that the time began running from January 2024. This is how the real contest between the parties for the purpose of decision of the present Application is about the exact Article of the Limitation Act by which the Suit would be governed. If the Suit is held to be governed by the provisions of Article 109 of the Limitation Act, the suit would be barred by limitation. If on the other hand, the suit is held to be governed by the provisions of Article 59 of the Limitation Act and if the statement in the Plaint about the date of acquisition of knowledge of impugned instruments of January 2024 is to be accepted as of now, the Suit will have to be held to be within limitation for the limited purpose of decision of the present Application.

20) Parties do not seriously dispute the proposition that a suit which is hopelessly barred by limitation can be nipped in the bud by having recourse to the provisions of Order VII Rule 11 of the Code. This principle has been repeatedly enunciated in various judgments of the Apex Court. Though there are several judgments holding that the suits which are hopelessly barred by limitation must be nipped in the bud by having recourse to provisions of Order VII Rule 11 of the Code, it may be apposite to make a reference to only two judgments of the Apex Court. In *Dahiben v. Arvindbhai Kalyanji Bhanusali*⁷ it is held as under :

⁷ (2020) 7 SCC 366

23. ... 23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or **the suit is barred by limitation under Rule 11(d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.**

(emphasis added)

21) In *Shri. Mukund Bhavan Trust* (supra) the Apex Court has held in para 18 as under :

18. Continuing further with the plea of limitation, the Courts below have held that the question of the suit being barred by limitation can be decided at the time of trial as the question of limitation is a mixed question of law and facts. **Though the question of limitation generally is mixed question of law and facts, when upon meaningful reading of the plaint, the court can come to a conclusion that under the given circumstances, after dissecting the vices of clever drafting creating an illusion of cause of action, the suit is hopelessly barred and the plaint can be rejected under Order VII Rule 11.** In the present case, we have already held that 02.03.2007 is a fictional date. It is not a case where a fraudulent document was created by the appellant or his predecessors. The title of the suit property as observed by us earlier was conveyed in 1938 and 1952, and what transpired later by way of compromise was only an affirmative assertion by the State. While so, the prayer (a) made in the suit relates to declaration to the effect that the Respondent No. 1 is the owner of the suit properties.

(emphasis added)

22) The Limitation Act is aimed at giving finality to the disputes between the parties. The Act aims to ensure the timely and efficient administration of justice by imposing strict time limits within which legal claims must be made. Its primary objective is to prevent the revival of stale claims and to encourage litigants to pursue their grievances promptly. The Act is in four parts. Part-II of the Act provides for limitation for filing of suits, Appeals and Applications. Part-III deals with the manner in which the period of limitation is to be computed and provides for various exceptions where time is required to be excluded while computing the period of limitation. Otherwise, under Section 9 of the Limitation Act, once time has begun to run, the same cannot be stopped by subsequent disability or inability to institute a Suit. Part-III of the Limitation Act however provides for certain exceptions where the

prescribed time can be excluded while computing limitation which has already begun running under Section 9. Section 17 of the Limitation Act is a vital provision, which carves out an exception to Section 9 where the period of limitation does not begin to run in a Suit based upon fraud of a defendant until the Plaintiff discovers the fraud. Section 17 of the Act provides thus :

17. Effect of fraud or mistake.-(1) Where, in the case of any suit of application for which a period of limitation is prescribed by this Act,-

(a) the suit or application is based upon the fraud of the defendant of respondent or his agent; or

(b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or

(c) the suit or application is for relief from the consequences of a mistake; or

(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him;

the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it, or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:

Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which-

(i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or

(ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or

(iii) in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.

(2) Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order within the period of limitation, the Court may, on the application of the judgment-creditor made after the

expiry of the said period extend the period for execution of the decree or order.

Provided that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may be.

23) In the present Suit, the Plaintiffs have not referred to the provisions of Section 17 of the Limitation Act. Though the words such as 'collusion, misrepresentation, cheating, dishonest, misappropriation' are used in the Plaint, Plaintiffs have apparently not pleaded that the Suit is based on fraud by the Defendants. Even Mr. Kumbhat has fairly not referred to the provisions of Section 17 of the Limitation Act. This is possibly on the count that fraud on the part of Defendants is not the case of the Plaintiffs, but their real grievance is alienation of property of joint family by father without their consent. Under the provisions of Order VII Rule 6 of the Code, if the Suit is instituted after expiration of period prescribed by the Limitation Act, the Plaint must contain a pleading with regard to the ground upon which exemption from limitation period is claimed. Order VII rule 6 of the Code provides thus :-

Grounds of exemption from limitation law- Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed:

Provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.

However, it is not necessary to delve deeper into the aspect of exclusion of period or exemption from limitation as the case of the Plaintiffs is that the Suit is governed by the provisions of Article 59 of the Limitation Act and that the same is within limitation. It is not Plaintiff's pleaded case that they are entitled to exclusion of any period of time or exemption from period of limitation under Chapter-III of the Limitation

Act. In that sense, it is not necessary to discuss the ratio of the judgment of the Apex Court in *Santosh Devi* (supra) in which the Apex Court has highlighted the importance of pleadings regarding the ground on which exemption from normal period limitation is claimed and has held that mere use of general words such as 'fraud' is not sufficient for saving a Suit from being barred by limitation by having recourse to the provisions of Section 17 of the Limitation Act.

24) Reverting to the main controversy at hand about the exact Article of Limitation Act by which the Suit is governed, careful perusal of the provisions of Article 109 of the Limitation Act would indicate that the said provision is made for affording an extended period of limitation when alienation is of ancestral property. Otherwise, the suits for setting aside an instrument of alienation would otherwise be governed by Article 59 of the Limitation Act, for which short period of three years is prescribed for filing of a Suit. However, for conserving and protecting ancestral properties being alienated by depriving share to rightful co-parceners, a special and extended period of limitation is prescribed by Article 109 of the Limitation Act. If a son or daughter believes that his/her share in the ancestral property is unauthorisedly sold by the father, an extended period of 12 years is prescribed for filing the suit challenging such alienation. Another benevolent provision is made with reference to the time from which limitation period begins to run. In suits governed by Article 109, the suit need not be filed within 12 years of date of execution of the instrument of alienation. The suit can be filed within 12 years from the date on which the alienee takes possession of the alienated property. Thus, Article 109 is a special benevolent provision made to protect shares of property of members of Hindu undivided families by providing extended period of limitation of 12 years, as well as permitting filing of suit within 12 years of date taking over of possession by alienee. On the other hand, for filing of suit

to set aside any other alienation (*not being alienation of ancestral property by father*), shorter period of limitation of three years is prescribed.

25) Since the period of limitation prescribed under Article 109 is longer and more beneficial, a strange situation has arisen in the present case where Plaintiff has referred to the provisions of Article 59 of the Limitation Act prescribing shorter period of limitation. The reason for doing so is prescription of the time from which limitation starts running in suits governed by Article 59 of the Limitation Act. Since Article 59 of the Limitation Act permits filing of suit within three years from the date of acquisition of knowledge of execution of the impugned instrument, Plaintiffs are relying on provisions of Article 59. This is a reason why Plaintiffs are not relying on benevolent provision of Article 109 providing for extended period of limitation and insist that the Suit must be held to be governed by an Article 59 providing for shorter period of limitation. Thus, more benevolent provision is given up and reliance is placed on Article providing for shorter period of limitation by the Plaintiffs.

26) In my view, if the pleadings in the Complaint are perused, there can be no doubt to the position that the Suit has been filed by the children to have alienation of ancestral property set aside by the father. Following pleadings in the Complaint would make this position more than apparent:-

7 . The Plaintiffs state that their grandfather was the only son of their Great Grandfather - Shri Vithalrao Sambhaji Gangla and the father of Plaintiffs was the only son of their Grandfather Shri Madhavrao Vithalrao Gangla. Great Grandfather of Plaintiff passed away in or around the year 1945 leaving behind the grandfather and father of the Plaintiffs. **The grandfather and father of the Plaintiffs consequently became jointly entitled to ½ (Half) a share each of the said property.**

9. The Plaintiffs state that the said property remained a joint family property of great grandfather, grandfather and father of Plaintiffs without any partition inter se till the birth of the Plaintiffs and even thereafter. **Consequently, the Plaintiff became entitled to a share in the joint family property by birth.**

10. The Plaintiffs state that Grandfather of the Plaintiffs having passed away on 12/09/1977 leaving behind the father of Plaintiffs and Plaintiff No.1 as the only surviving coparceners entitled to the ancestral property. Hereto annexed and marked as Exhibit - F is a copy of the death certificate of grandfather of Plaintiffs. Ergo, the Plaintiff No.1 along with his father became entitled to ½ (Half) a share in the said property on the demise of his grandfather.

11. The Plaintiffs state that without the knowledge and consent of Plaintiffs, the father of Plaintiffs is alleged to have executed a Declaration in terms of Form A dated 01/10/2004 as per the Maharashtra Apartment Ownership Act, 1970, and the Rules formulated thereunder, portraying himself as the sole owner of the said property. Hereto annexed and marked as Exhibit G is a copy of the said Form "A" dated 01/10/2004.

12 The Plaintiffs state that father of Plaintiffs was aware and conscious of the fact that the **said property was an ancestral property** and the existence of rights of Plaintiff No.1 in the said property since the **father of Plaintiff had also obtained an interest in the said property as a minor during the lifetime of his father and grandfather**, still the Declaration in terms of Form A appears to have been executed by father of Plaintiffs claiming to be the Sole Owner thereof which is apparently and manifestly a false and incorrect statement.

25. The Plaintiffs state that the Defendant Nos. 2-31 have clearly colluded against the Plaintiffs and deceived the authorities and the Defendant No.32 into believing that they are now the owners of the said property along with 15 units therein having complete knowledge of the fact that the said property was always forming part of the joint family property of the Plaintiffs and their forefathers.

31. The Plaintiffs state that the father of Plaintiffs has not caused the alleged alienation either for any pious purposes or for discharging any debts of joint family.

(emphasis and underlining added)

27) The above pleadings would leave no manner of doubt that the Suit has been filed by children for setting aside alienation of alleged ancestral property by their father. The Suit would therefore be governed by the provisions of Article 109 of the Limitation Act. As observed above, Article 109 of the Limitation Act carves out an exception to

Article 59 by providing extended period of limitation when alienation is by father of the ancestral property. Otherwise, for setting aside every other instrument, the period of limitation would only be three years. Plaintiffs cannot be permitted to take benefit of Article 59 of the Limitation Act, which has no application to the present case, for the purpose of taking benefit of pleaded date of acquisition of knowledge of execution of impugned instruments.

28) Faced with the situation that the Plaint contains express averments that the father has alienated the ancestral property in which Plaintiffs have a share, Mr. Kumbhat has attempted to salvage the situation by contending that Article 109 of the Limitation Act applies only when joint family property is alienated by *Karta* of the family and that father in the present case has not executed the impugned instrument in his capacity as *Karta*. I am unable to agree. Article 109 does not use the word '*Karta*'. It does not restrict its application only to a situation where the father does the act of alienation in his capacity as *Karta*. Article 109 being a benevolent provision aimed at prescribing an extended period of limitation, its application cannot be restricted by reading into it the word '*Karta*' which is not expressed used therein. If the Legislature intended to restrict application of extended period of limitation only to cases where alienation is by father in his capacity as *Karta*, it would have expressly provided so. If contention of Mr. Kumbhat is accepted, it would restrict the application of benevolent provision to only those cases where the alienation can be proved in capacity of father as *Karta*. In all cases, where the alienation is by father not in his capacity as *Karta*, the normal period of limitation of 3 years under Article 59 would be applicable. The extended period of limitation would then have to be applied only in restrictive cases. It is a well-established principle of statutory interpretation that adding words that

would create a more restrictive meaning than intended by the legislature should be avoided. The contention on behalf of Plaintiffs about non-application of Article 109 of Limitation Act on account of alienation by father being not in his capacity as *Karta* is stated to be rejected.

29) Under Article 109, the period of 12 years for filing of Suit for setting aside alienation of ancestral property by a father starts running when the alienee takes possession of the property. Here, it would be apposite to refer to the relevant covenants of one of the Deeds of Apartment executed by Plaintiff's father. The same read thus :-

And IT IS HEREBY FURTHER AGREED CONFIRMED and DECLARED by the parties hereto that in accordance with and subject to terms conditions stipulations contained in the Declaration dated 1st October 2004 of the Grantor under the provisions of the Maharashtra Apartment Ownership Act, 1970 the Apartment Owners shall hold the said Apartment and undivided right title interest in the common areas and facilities appertaining thereto as the absolute owners thereof and the possession of the said Apartment shall continue to remain with the Apartment Owners as an incidence of conversion of title of the Apartment Owners from erstwhile tenants to the owners of the said Apartment and as such the Apartment owners are entitled to the exclusive ownership and possession of the the said Apartment and undivided right title interest in the common areas and facilities appearing thereto according to the provisions of Maharashtra Apartment Ownership Act, 1970 AND it is agreed by the parties hereto that the stamp duty payable on these presents and other documents or writings which may be executed in pursuance hereof as well as the incidental and out of pocket expenses including the registration charges, if any, shall be borne and paid by the Apartment Owners only.

(emphasis and underlining added)

30) Thus, the possession of each of the units was handed over to the alienees simultaneously with execution of Deeds of Apartment. Therefore, the period of limitation began running from the date of execution of Deeds of Apartment. The contention raised by Mr. Kumbhat that Defendants were already tenants and that therefore there was no question of handing over possession of units to them does not cut any ice. The issue is about the capacity in which the possession of

each unit got transferred in favour of alienees. They may have been in possession of the respective units as tenants. However, with execution of Declaration and Deeds of Apartment, their possession of units became in capacity as alienees. Thus, the period of limitation of 12 years began running from the date of taking over possession of units by the alienees as apartment owners simultaneously, with execution of Deeds of Apartment.

31) In my view therefore the Suit is governed by Article 109 of the Limitation Act and is hopelessly barred by limitation.

32) It otherwise becomes impossible to believe that Plaintiffs, all of whom were major on the date of execution of the impugned instruments and who have also retained ownership of one of the units in the building, were not aware of execution of impugned instruments which led to formation of Defendant No.1-Condominium. After formation of Association of Apartment Owners in pursuance of Declaration dated 1 October 2004, the building is being managed entirely by the Condominium, in which Plaintiffs also own a Unit. It therefore becomes difficult to believe that Plaintiffs did not have any knowledge about formation of Condominium, execution of Declaration or execution of Deeds of Apartment and Deeds of Transfer. However, it is not necessary to delve deeper into this aspect as the Suit is held to be governed by a more benevolent provision of Article 109.

33) What must also be borne in mind is the fact that all the three instruments i.e Declaration dated 1 October 2004, Deeds of Apartment dated 4 November 2004, 6 November 2004, 10 November 2004 and 6 October 2005 and Deeds of Transfer dated 1 February 2005 are registered instruments. Therefore, Plaintiffs cannot be permitted to state that they did not have knowledge about execution of the same. In

this regard, reliance by Mr. Khandeparkar on judgments of the Apex Court in *Shree Mukund Bhavan* (supra) is apposite. By referring to the judgment in *Dilboo Versus. Dhanraj*⁸ the Apex Court held in para-20 as under :-

20. As noted in the preceding paragraphs, the court auction was held in 1938 and sale deed was registered in the year 1952 in favour of the Defendant No. 1 in respect of the suit properties, whereas, the suit was filed only in the year 2008, though the Respondent No. 1/Plaintiff and his predecessors were aware of the existence of the said registered sale deed of the suit properties. In fact, there is no averment in the plaint to the effect that the predecessors were not aware of the transactions. **The limitation period for setting aside the sale deed would start running from the date of registration of the same and as per Article 59 of the Limitation Act, 1963, after three years of the registration, the Plaintiff is barred from seeking cancellation of the said registered sale deed or the decree that was passed before 50 years and the consequential judgments.** We have already referred to Section 3 of the Specific Relief Act, 1963. The plaintiff, in our view, has miserably failed to ascertain the existence of the fact by being diligent. The question as to when a period of limitation would commence in respect of a registered document is no longer res integra. In this regard, this Court in *Dilboo v. Dhanraji* 25, held as follows:

"20..... Whenever a document is registered the date of registration becomes the date of deemed knowledge. In other cases where a fact could be discovered by due diligence then deemed knowledge would be attributed to the plaintiff because a party cannot be allowed to extend the period of limitation by merely claiming that he had no knowledge"

(emphasis added)

34) Similarly, in *Umadevi* (supra), the Apex Court has held in paras-9 to 11 as under :-

9. The Defendants further argued that the Plaintiffs were effectively challenging a sale deed executed by their own aunt. Since the suit for partition was filed without contesting the sale deed, that itself was legally untenable. **Moreover, a registered sale deed constitutes constructive notice to the world unless it is a case of fraud, coercion, or minority and therefore there has to be a presumption in law that the Plaintiffs had knowledge of the sale deed.**

(emphasis added)

⁸ 2000 (7) SCC 702

35) Therefore, Plaintiffs' claim of acquisition of knowledge of the impugned instruments in January 2024 is otherwise fallacious and even under Article 59, the Suit can be held to be barred by limitation. The averment of acquisition of knowledge about impugned instruments in January 2024 is nothing but a clever drafting. There are no other supporting pleadings as to how Plaintiffs could remain oblivious about formation of Condominium and management of building by the Condominium despite owning a Unit in the same building. The Suit appears to have been timed and filed to put a spoke in the redevelopment process, which aspect is being dealt with in the latter part of the judgment. Thus, even *qua* Article 59 of the Limitation Act, the averment of acquisition of knowledge in January 2024 in the Pliant is nothing but a clever drafting. However, I am not delving deeper into this aspect as I have held that the Suit is governed by Article 109 of the Limitation Act and barred by limitation.

36) The Court cannot turn blind eye to the timing at which the Suit is filed. The suit is conveniently filed only after noticing the fact that the building is taken up for redevelopment. Plaintiffs' father retained ownership of one units in the building, which ownership is inherited by Plaintiffs. In their capacity as owner of one Unit, Plaintiffs would secure benefits of redevelopment. Plaintiffs are apparently opposed to the redevelopment process. Plaintiffs thus are the sole opposing unit owner as compared to the other apartment owners, who have unanimously consented for development of the building through Defendant No.32. To tide over the difficulty of impossibility to overturn majority decision, Plaintiffs have invented the idea of keeping the property under litigation by filing the present Suit so as to delay and scuttle the redevelopment process. If Plaintiffs genuinely believed that their father had no authority to alienate their share in the property, they would not have maintained silence for over 20 years. They saw the Condominium being formed in

front of their eyes, they allowed the Condominium to manage the building for over 20 years. The averment in the Plaint also links the cause for filing of the suit to redevelopment proposal initiated by the Condominium. There is express prayer in the Plaint for setting aside the Development Agreement. The Suit is thus filed with the oblique motive of opposing the redevelopment process. The building is over a century old and needs immediate redevelopment. Its redevelopment cannot be delayed or be kept waiting till Plaintiffs persecute their hopelessly time-barred claim. The provisions of Order VII Rule 11 of the Code are designed specifically for the purpose of nipping in the bud in such types of baseless litigation. Since the Suit is wholly barred by Article 109, no purpose would be served by subjecting the Defendants to lengthy trial. The Suit is aimed clearly at preventing re-development of the building. Otherwise, Plaintiffs apparently never objected to execution of Declaration and Deeds of Apartment and formation of Condominium by the apartment owners. In my view, therefore a perfect case is made out for rejection of the Plaint in the present Suit which is clearly barred by limitation. No purpose would be served by taking the Suit to trial as the same is *ex-facie* barred by limitation.

37) The Application accordingly **succeeds**. The Plaint in the Suit is accordingly rejected under Order VII Rule 11 of the Code. Consequently, the Suit is **dismissed**. Interim Application is accordingly **allowed** in the above terms.

[Sandeep V. Marne, J.]