



**IN THE HIGH COURT OF BOMBAY AT GOA.
FIRST APPEAL NO. 30 OF 2025.**

PRATAPSIKHA WAMANRAO RANE
SARDESSAI REP. POA
CHANDRASHEKHAR P. R. SARDESSAI
AND ANR.

.... Appellants.

Vs.
M/S DIESH HOLDING PVT. LTD
AND 13 ORS.

.... Respondents.

Mr Parag Rao and Mr Akhil Parrikar, Advocates for the Appellants.
Mr Deepak Gaonkar, Advocate for Respondent No.1.
Mr Ryan Menezes, Advocate for Respondent No.3.
Mr Uday Singh Rane Sardessai, Respondent No.2 present in person.

**CORAM : SUMAN SHYAM &
AMIT S. JAMSANDEKAR, JJ.**

DATED : 14th January 2026.

ORDER (Per SUMAN SHYAM, J)

1. This First Appeal filed under Section 96 of CPC is directed against the judgment and order dated 07.04.2025 passed by the Court of Civil Judge, Senior Division at Bicholim Goa in Special Civil Suit No. 5/2023/A, rejecting the plaint filed by the Appellants as plaintiffs, by invoking the power under Order 7 Rule 11 of CPC, on the ground

that the suit was barred by limitation. It appears from a perusal of the impugned order dated 07.04.2025 that the learned Trial Court has also accepted the plea raised by the Defendant Nos. 2 and 3 that there was no cause of action to file the suit.

2. The impugned order has been assailed by the Appellants' primarily on the two counts. Firstly, that a plaint can be rejected under Order 7 Rule 11 of CPC by reading of the plaint and not with the help of any extraneous material. But in the present case, the learned Trial Court has relied upon documents filed by the Appellants which were not a part of the plaint. Secondly, the learned Trial Court, having initially rejected the application filed under Order 7 Rule 11 of CPC by order dated 24.04.2024, could not have reversed/recalled the said order or rejected the plaint on the ground that suit was barred by law of limitation merely by relying upon the additional documents filed by the plaintiff on 26.02.2024.

3. It is the submission of Mr Rao that the documents filed by the Appellants were available on record, even on the date on which, the order dated 24.04.2024 was passed by the learned trial Court rejecting the application under Order 7 Rule 11 of CPC. Therefore, the learned Trial Court has committed a grave error by

entertaining the review petition and reviewing the order dated 24.04.2024.

4. The learned Counsel for the Appellants has further argued that the Court below had observed that the Appellants had knowledge of the deeds of sale executed in the year 2007 atleast on 25.09.2018. If that be so, going by the observation of the trial Court, accounting the relaxation granted by the Hon'ble Supreme Court pertaining to COVID period from 15.03.2020 to 28.02.2022, the suit, which was instituted in the month of April 2023, could have been filed on any date or on or before 25.09.2023. Viewed from that angle also, submits Mr Rao, the findings recorded by the learned trial Court are perverse and the impugned order is liable to be interfered with on such count alone.

5. Responding to the above submission, Mr Menezes, learned counsel appearing for the Respondent no. 3 has argued that it is by the own showing of the plaintiffs that they had knowledge about the execution of the deeds of sale prior to 25.09.2018. Therefore, in view of mandate of Article 58 of the Limitation Act 1963, the suit of the plaintiffs was evidently barred under the Law of Limitation and hence, the plaint has been rightly rejected by the learned Trial Court.

6. The Respondent no. 2 has appeared in person and submitted that there is no legally enforceable right of the plaintiffs involved in the suit and that the plaintiffs did not have any cause of action for filing the suit. In support of his above argument, the Respondent no. 2 has relied upon the decision of the Honble Supreme Court in the case of ***Devan Gope@ Devnandan Yadav & ors. Vs Pavitri Devi & ors. (Civil Appeal No. 14811 of 2024 dated 19.11.2025)***.

7. Mr Gaonkar, learned Counsel for the Respondent No.1 submits that his client is the purchaser of the suit land by means of registered deeds of sale dated 18.05.2007 and 23.05.2007. However, since his client did not file any application under Order 7 Rule 11 CPC, hence, he would adopt the submissions made by learned Counsel for the Respondent no. 3.

8. We have considered the arguments advanced at the bar and have also gone through the material available on record.

9. As would be apparent from the narration of the factual drop made herein above, the challenge in this First Appeal is to the order passed by the learned trial Court under Order 7 Rule 11 of CPC rejecting the plaint of the Appellants/plaintiffs primarily on the ground that the suit was barred by limitation. Law is well settled that a plaint can be rejected under Order 7 Rule 11 of CPC by taking the

averments made in the plaint on their face value. However, in doing so, it would not be permissible for the trial Court to rely upon any material which is not a part of the plaint. Even the statements made by the Defendants in the written statement cannot be relied upon for rejecting a plaint in exercise of jurisdiction under Order 7 Rule 11 of CPC.

10. From the perusal of the plaint, we find that plaintiffs have averred that the cause of action in the present suit arose on 27.02.2023. The truthfulness of the said statement can be ascertained only during trial. It is correct that there is no specific averments in the plaint as to on which date, the plaintiffs became aware as regards the execution of the deeds of sale dated 18.05.2007 and 23.05.2007. It is also no doubt correct that unless it is established that the suit was filed within the period of limitation, the suit can be held to be barred by limitation. However, the fact that there is no such categorical averment in the plaint the showing actual date of knowledge of the deeds of sale, cannot be construed to hold that the plaintiffs did have knowledge of the execution of the deeds of sale on a prior date.

11. What is also significant to note herein is that the learned trial Court has also observed in the impugned order that the plaintiffs had knowledge about the deeds of sale at least on 25.09.2018. However,

there is no finding of the trial Court that the plaintiffs had knowledge about the execution of deeds of sale on a date prior to 25.9.2018. If that be so, by applying the relaxation provided by the Hon'ble Supreme Court during the COVID period, as indicated above, it is apparent that there is a strong possibility that the plaintiffs suit would be within the period of limitation reckoned from 25.09.2018.

12. Under the above circumstances, we are of the considered opinion that this is a fit case wherein interference of this Court with the impugned order is called for. The learned trial Court in our view, was not justified in invoking jurisdiction under Order 7 Rule 11 of CPC to reject the plaint, in the fact of circumstances of this case, more so, since the application was originally rejected by the order dated 24.04.2024. Rather, we are of the view, that limitation being mixed question of law and facts, considering the averments made in the plaint that cause of action in the suit arose on 27.02.2023, it would have been proper for the learned trial Court to decide the plea regarding want of cause of action and limitation as preliminary issues in the suit.

13. For the reason stated above, we are inclined to interfere with the impugned order. The same is accordingly set aside. However, the Respondents/defendants are granted liberty to take the plea of want

of cause of action and suit being barred by limitation before the learned trial Court with a prayer to decide the suit by framing preliminary issues under Order 14 of CPC.

14. We are informed that the defendants have filed written statements and the suit was at the stage of framing issues when the impugned order was passed. Therefore, in order to avoid any prejudice being caused to either parties, all contentions of both the sides are kept open, with liberty to raise before the learned Trial Court, at an appropriate stage.

15. Parties to appear before the trial Court on 23.01.2026 at 2.30p.m.

16. Appeal stands allowed and disposed of accordingly. Pending applications, if any, would stand disposed of.

[AMIT S. JAMSANDEKAR, J.]

[SUMAN SHYAM,J.]