

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 196 OF 2025**

Sukhdeo Tukaram Papare ...Appellant
VERSUS
Sahebrao Appa Papare ...Respondent

WITH
INTERIM APPLICATION NO. 16105 OF 2024
IN
APPEAL FROM ORDER NO. 196 OF 2025

Sukhdeo Tukaram Papare
In the matter between
Sukhdeo Tukaram Papare ...Applicant
VERSUS
Sahebrao Appa Papare ...Respondent

Mr. Pranit Kulkarni i/b Jaywant Gaikwad, Dhananjay Chavan for the
Appellant/Applicant.
Mr. Prasad B. Kulkarni for the Respondent.

CORAM : M. M. SATHAYE, J.
DATE : 17th FEBRUARY 2026.

P.C.

1. Heard learned counsel for the parties. A defendant has been aggrieved by restoration of suit against him, in which plaint was rejected by the Trial Court, but Appellate Court has reversed the decision, effectively remanding the matter to Trial Court. By order dated 10.03.2025, this Court has granted leave to convert second appeal (filed earlier) into an Appeal from Order.

2. Few facts, shorn of unnecessary details are as under.

2.1. The Appellant is original Defendant in Regular Civil Suit No. 187/2019 which is filed for declaration that registered sale deed dated 04.12.1986 in respect of suit property, is bogus as being executed in the

absence of the Plaintiff. Further prayer is made seeking perpetual injunction restraining the Defendant from obstructing alleged possession.

2.2. During pendency of the suit, present Appellant/Defendant filed an Application below Exh. 47 under the provision of Order 7 Rule 11(a) and (d) of Civil Procedure Code, 1908 ("CPC" for short) praying for rejection of plaint.

2.3. By order dated 01.07.2023, the learned Trial Judge allowed the Application and rejected the plaint. The Respondent/Plaintiff filed Regular Civil Appeal No. 154/2023 challenging the said order of rejection of plaint. The learned District Judge-3 Solapur, by impugned order dated 07.08.2024 has allowed the Appeal, thereby setting aside the order passed below Exh.47, thereby setting aside rejection of plaint, thereby restoring the said suit for hearing.

2.4. In these circumstances, the Appellant/Defendant has filed present Appeal challenging the impugned order dated 07.08.2024.

3. Learned counsel for the Appellant submitted that the document about which declaration is sought, is a registered document of 1986 and registration in itself is the knowledge to the parties. He submitted that therefore, the suit filed in September, 2019 seeking declaration about registered document of 1986 is barred by law of limitation in the teeth of the pleadings itself. He submitted that merely by alleging fraud, the Plaintiff cannot take advantage and the limitation cannot be arrested for the purpose of seeking declaration. He submitted that the learned Trial Judge had rightly considered the pleadings to conclude that the plaint deserves to be rejected as barred by law of limitation. He further submitted that an illusory cause of action camouflaged with clever drafting, cannot be considered as a real cause of action and therefore, the plaint also deserves to be rejected for want of disclosure of cause of action. He invited the Court's attention to the averments in the plaint and also relied upon a copy of the registered sale deed as well as mutation entry No. 1930 by which,

the name of the Defendant was included in the Revenue record pursuant to the registered sale deed.

4. By relying upon **Lydia Agnes Rodriques Nee D' Cunha and Ors vs. Joseph Anthony D' Cunha and Ors (2014 (3) Mh.L.J. 508)** he submitted that a party cannot be allowed to extend a period of limitation by merely claiming that he had no knowledge. He submitted that from the pleadings, it is clear that the Plaintiff has not established due diligence. Relying on **Dilboo Smt (dead) By Lrs. and Ors Vs. Dhanraji (Smt) (Dead) and Ors. (2000 (7) SCC 702)**, he submitted that whenever a document is registered, date of registration becomes date of deemed knowledge and therefore, the Plaintiff must be deemed to have knowledge in 1986 and the plaint filed in the year 2009 must be rejected as barred by limitation. He further submitted that in the present case, the question of limitation is a pure question of law. Relying on **T. Arivandandam Vs. T. V. Satyapal and Anr. (1977 (4) SCC 467)** it is submitted that if the Court comes across clever drafting which has created the illusion of cause of action, then such attempt must be nipped in the bud, by resorting to provisions of Order 7 Rule 11.

5. *Per contra*, learned counsel for the Respondent/Plaintiff submitted that at the stage of Order 7 Rule 11 of CPC, the Court can consider the averments in the plaint alone and if the averments in paragraph No. 2, 4, 6 and 7 are seen, it is clear that specific allegations about the document in question being created as bogus and fabricated by taking thumb impressions in Plaintiff's absence are made. He submitted that it is clearly averred that the suit-property is an ancestral property. He further submitted that in September, 2019 when there was altercation between the parties on the field/suit property, threatening language was used and therefore when the documents were searched and found out, the Plaintiff realized that fraud has been played upon him.

6. Relying on **Daliben Valjibhai vs. Prajapati Kodarbhai (2024 SCC OnLine SC 4105)** and **P. Kumarakurubaran Vs. P. Narayanan and Ors. (2025**

SCC OnLine SC 975), learned counsel for the Respondent/Plaintiff submitted that the averments about knowledge of a particular document is necessarily a mixed question of fact and law and therefore, plaint cannot be rejected on the ground of limitation when fraud is alleged. He submitted that the issue as to whether the Plaintiff has prior notice or reason to be aware of a transaction and whether the plea regarding date of knowledge is credible or otherwise, are matters that necessarily require appreciation of evidence and therefore, Plaintiff cannot be non-suited at the threshold under Order 7 Rule 11 of CPC. He further submitted that in the prayers, apart from seeking declaration about registered sale deed, a prayer is also made seeking perpetual injunction against the Appellant/Defendant and therefore, even if, for one of the prayers, the Court comes to the conclusion that the plaint cannot be rejected, then partial rejection is not permitted, as held by this Court in **Aniket Mahendra Mandhare and Anr. Vs. Sukhdev Dattatray Waje and Anr. (Judgement Dated 09.07.2025 in SA/62/2025)** by following the recent judgment of Hon'ble Supreme Court in **Central Bank of India and Anr. Vs. Prabha Jain and Ors. [(2025) 4 SCC 38]**.

7. I have considered the rival submissions and perused the record.

8. At the outset, it must be noted that at the stage of Order 7 Rule 11 of CPC, the Court can consider only the pleadings in the plaint as well as the documents produced by the Plaintiff along with the plaint. The Court cannot look into the defence raised by the Defendant or the possible defence that may be raised or other documents produced by Defendant.

9. Perusal of the plaint indicates that in paragraph No. 2, a stand is taken that the subject matter sale deed dated 4.12.1986 is false and fabricated and is prepared using thumb impression in the absence of Plaintiff. The Plaintiff has averred in paragraph No. 4 that under mutation entry No.1963, his name was included as sole legal heir of his father. In paragraph No. 5 it is contended that the revenue authorities have not kept the entry in favour of Plaintiff on 7/12 extract for remaining land. It is

pleaded that out of total land of gat No. 290, the entry in the Plaintiff's name of remaining land should have been continued. It is averred in paragraph No. 7 that in September, 2019, when the Plaintiff was cultivating the suit property, quarrel ensued between the parties and the Plaintiff was threatened. It is further averred that thereafter, the Plaintiff realized about fraud being played.

10. No doubt that registration of a document is deemed knowledge to the party, who has executed the document. However, the averments in paragraph No. 2 about the said registered document being created by the Defendant using false thumb impressions in the absence of Plaintiff and the pleadings about the Plaintiff realizing fraud being played in September, 2019, makes it difficult for the Court to hold the issue of limitation in this case as 'purely a question of law' as urged by learned counsel for the Appellant/Defendant. In view of averment that sale deed is executed in absence of plaintiff, the aspect of knowledge about document as well as knowledge of mutation entry No. 1930 by which the Defendant's name was entered into revenue record for 1/3rd share is arguable. The Court cannot lose sight of the fact that the Respondent/Plaintiff has also prayed for perpetual injunction vide prayer No. 2 in his capacity as owner in possession.

11. Learned counsel for the Appellant has submitted that the prayer of perpetual injunction is merely consequential as the same is based on the main prayer No. 1 of declaration about registered sale deed. Considering the averments in paragraph No. 7 about quarrel on the suit property and averments about Plaintiff cultivating the suit property, in my view, it is difficult to accept at this stage that second prayer about perpetual injunction is merely a consequential prayer. Assuming that the Defendant succeeds in establishing that the declaration cannot be granted, even then the sale deed is only in respect of 1/3rd share in gat No. 290.

12. Perusal of the registered sale deed indicates two things. First it is not with biometric identity of parties, because at the relevant time, that

system may not be implemented at the relevant location. Second is that 1/3rd share, which is sold, is 'undivided share without specific boundaries'. In that view of the matter, the second prayer about perpetual injunction in respect of the suit property cannot be considered as merely consequential when the injunction is sought in the capacity of owner.

13. The Defendant may have an excellent case on the ground of limitation on appreciation of evidence, however, at the stage of rejection of plaint under Order 7 Rule 11, I find it difficult to accept that it is purely a question of law. In my considered view the issue of limitation involved in the present case is a mixed question of fact and law. Also, considering the peculiar averments explained above, the cause of action cannot be termed as illusory.

14. In **Aniket Mahendra Mandhare (supra)** this Court has followed the dictum of Hon'ble Supreme Court expressed in **Central Bank of India (Supra)** where, the Hon'ble Supreme Court has said that if the Court is of the view that one relief is not barred by law but the other relief is barred by law, then the Court must not make any observation about the relief which appears to be barred by law but leave it undecided at the stage of Order 7 Rule 11 of CPC. Therefore, assuming that prayer of declaration is barred by limitation still in presence of prayer of perpetual injunction, it is found necessary not to make any observation about prayer of declaration.

15. Considering the peculiar circumstances including the averments as explained above, in my view, this is not a fit case to reject the plaint under Order 7 Rule 11.

16. Viewed in the light of above, when the impugned order is seen, it is noted that the Appeal Court has considered the provision of Order 7 Rule 11 as well as the averments of about purchase of 1/3rd share. The Appeal Court has also considered the alleged nature of suit property and the case of the Plaintiff that he has no right to sell 58 gunthas. The Appeal Court has also considered the averments about effect of mutation entries and the alleged disturbance to possession in September, 2019. Considering these

aspects, the Appeal Court has held that plaint cannot be rejected under Order 7 Rule 11 (a) or Rule (d).

17. The view taken by the Appeal Court is a probable view and there is no perversity or material irregularity. As such, there is no reason to interfere in appellate jurisdiction.

18. The Appeal from Order is accordingly dismissed. In view of dismissal of Appeal, Interim Application does not survive and the same is also disposed of.

19. Needless to mention that the suit shall be decided on its own merits and without being influenced by any observation in the impugned order or this order. Rival contentions of all parties on merits, are kept open.

20. All concerned to act on duly authenticated or digitally signed copy of this order.

[M. M. SATHAYE, J.]