2026:BHC-AS:2206

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1631 OF 2025

Ryberg Cyril Cosmas Henriques]
Aged 63 years, Indian inhabitant]
R/at : Flat No. 6, Salsette C.C.H.S.]
56 Hill Road]
Bandra (West), Mumbai – 400 050.] **...Appellant**

Versus

Kashmira Eruch Billimoria]
Aged 59 years, Occ : Unknown]
Indian inhabitant, R/at : B-41]
Beena Apartment, Sir M. V. Road]
Andheri (East), Mumbai – 400 069.] **...Respondent**

Mr. Joel D'souza for Appellant.
Mr. Chriag Mody for Respondent.

Coram : Sharmila U. Deshmukh, J.

Reserved on : 19th January, 2026.

Pronounced on : 28th January, 2026.

Judgment :

1. The present First Appeal is at the instance of the Plaintiff being aggrieved by the order dated 5th July, 2022 passed by the City Civil Court rejecting the Plaint under Order VII, Rule 11(d) of Code of Civil Procedure, 1908. The parties are referred to by their status before the Trial Court.

2. S. C. Suit No. 1448 of 2021 was filed by the Plaintiff on 2nd July, 2021 seeking a declaration that the registered deed of conveyance dated 19th March, 2008 is fabricated, bogus, fraudulent and invalid document with respect to the suit property which is land bearing Survey No. 94, Hissa No. 2, C.T.S. No. 104 situated at Culvem, Manori Gorai, Taluka Borivali and for an order of permanent injunction restraining the Defendant from accessing, entering or remaining in possession of the suit property. It is pleaded in the plaint is that the Plaintiff is the legal heir and grandson of late Cosmas Henriques and Serah Mary Henriques. The suit property was owned by Serah Marry Henriques and is the ancestral property of the Plaintiff acquired from late Serah Mary Henriques who died intestate on 1st October, 1985. The suit property stands mutated in the name of Mary Elias Kojmia Arik since last more than 70 years and has not been sold to the Defendant. It is pleaded that in or around the year 2008, one Jabel Rodrigues impersonated herself as Ms. Jabel Intur Rodrigues alias Mary Sera Elis Arik to the Defendant and a fabricated and bogus Deed was executed on 19th March, 2008 between the Defendant and Jabel purporting to be the conveyance of the suit property. On 11th November, 2009, Jabel and others were arrested by Gorai police and F.I.R. came to be registered against them and the proceedings are pending before the 26th Metropolitan Magistrate Court, Borivali. It is stated that on 19th

April, 2008, the Defendant filed an application with Tahsildar to transfer the suit property and to change the record in the name of the Defendant, which came to be rejected right up to Additional Commissioner (Konkan Division). On 30th December, 2009, the Defendant filed Suit No. 13 of 2010 seeking a declaration of right, title and interest in the suit property which was withdrawn. In or about 2018, the Plaintiff came across an unauthorized compound wall of 1.8 m height around the periphery of the suit property for which a number of complaints were made by the Plaintiff's late father and Writ Petition was filed in June, 2019 in High Court for demolition of unauthorized structures.

3. The pleading as regards the cause of action and limitation in paragraph 23 reads as under:

> **"23. Cause of action & limitation:** The Plaintiff came to know about the bogus deed of conveyance dated 19.3.2008 in about the year 2015. The suit is filed within the period of limitation as prescribed under limitation Act."

4. The Defendant filed an application seeking rejection of plaint under Order VII, Rule 11(d) of Code of Civil Procedure, 1908 contending that the suit is barred by law of limitation as the document is required to be challenged within period of three years. It was contended that the revenue proceedings were contested by the Plaintiff's late father, which proceedings were of the year 2008, which shows awareness of execution of deed. It was further contended that the Plaintiff has pleaded that he acquired knowledge about bogus deed of conveyance in or about year 2015 and the suit was therefore, in any event required to be filed within period of three years from the date of acquisition of knowledge. The Defendant also questioned the pecuniary jurisdiction of the Trial Court to try and entertain the suit.

5. The application came to be resisted by the Plaintiff contending that the issue of limitation is mixed question of fact and law requiring trial. It was denied that the Plaintiff was aware about the execution of the subject conveyance prior to the year 2015 and that the Plaintiff had returned to India only in the year 2015. It was contended that during COVID-19 pandemic, the Hon'ble Apex Court had extended the period of limitation for the suits and other proceedings for the period from 15th March, 2020 to 28th February, 2022 and the suit is filed within limitation.

6. The Trial Court framed the necessary points for determination as regards the limitation and jurisdiction and answered the issue of limitation against the Plaintiff. The Trial Court noted the pleading in the plaint about the knowledge of the Plaintiff in the year 2015 and held that the suit ought to have been filed within period of three years from the date of knowledge in the year 2015 and the suit is barred by limitation under Articles 58 and 59 of the Limitation Act, 1963.

7. Learned counsel appearing for Plaintiff submits that the suit was filed seeking declaration of ownership and for injunction as the conveyance executed in the year 2008 was forged and fabricated. He submits that the Plaintiff's father expired in March, 2020 and only thereafter the Plaintiff could file the present suit, which was filed on 2nd July, 2021. He submits that by virtue of COVID-19 pandemic, the period of limitation has been extended by the Hon'ble Apex Court. He submits that the Hon'ble Apex Court in the case of ***Shanti Devi (since deceased) through LRs. Goran vs. Jagan Devi and Others***[1] in identical facts has considered whether the provisions of Article 59 or 65 of Limitation Act, 1963 would apply and has held that Article 59 would apply to voidable transactions and not to those which are void and applied Article 65 to the suit therein. He points out that the Hon'ble Apex Court noted the decision of ***Hussain Ahmed Choudhary v. Habibur Rahman***[2] where it was reiterated that a person who is not a party to an instrument would not be obliged in law to seek its cancellation. He submits that Article 65 would apply in the present case and not Article 59 and therefore, the suit is within limitation.

8. Learned counsel appearing for Defendant would submit that the

1 2025 INSC 1105.

2 2025 SCC OnLine SC 892.

decision of ***Shanti Devi vs. Jagan Devi*** (supra) is clearly inapplicable as in the facts of that case the relief of injunction and alternate prayer of joint possession was sought. He submits that the death of the father of the Plaintiff does not give rise to the cause of action for applicability of the order of Hon'ble Apex Court extending the period of limitation. He submits that there is clear pleading in the plaint that the Plaintiff acquired knowledge about the conveyance in or about 2015 and hence, the suit which was filed on 2^{nd} July, 2021 is clearly barred by limitation.

9. The point arising for determination is whether upon *ex-facie* reading of the plaint, the suit was barred by law of limitation and hence could be terminated at the threshold under Order VII, Rule 11(d) of CPC.

10. It is well-settled that while adjudicating an application under Order VII, Rule 11 of Code of Civil Procedure, 1908, it is only the averments in the Plaint which are germane. The plaint has to be read holistically and in a meaningful manner to consider whether the averments of the plaint *ex-facie* show that the suit is barred by limitation. In event, the issue of limitation is a mixed question of law and fact which requires an inquiry into facts then the same requires evidence to be led and the action cannot be terminated under Order VII, Rule 11 of CPC.

11. With these settled principles in mind, if the plaint is perused, the suit seeks a declaration that the subject deed of conveyance dated 19th March, 2008 is fraudulent, fabricated, bogus, invalid Deed with respect to the suit property and for order of injunction restraining the Defendant from accessing or remaining on the suit property.

12. The Plaintiff is not the executant of the subject deed of conveyance and is not obliged to seek its cancellation. As held by the Hon'ble Apex Court in the case of ***Hussain Ahmed Choudhary v. Habibur Rahman*** (supra), in such case the Plaintiff must seek declaration that the said instrument is not binding upon him or that it is invalid in so far as he is concerned. In cases where the character of the sale deed is assailed as being fraudulent, this requirement is implicitly satisfied since the very averment that the sale deed is fraudulent indicates that the Plaintiff did not intend to be bound by it.

13. Applying the said proposition of law to the facts of the present case, the plaint pleads that the subject conveyance deed is fraudulent, fabricated and invalid document. It was therefore not necessary for the Plaintiff to seek cancellation of the deed and resultantly Article 59 of Limitation Act, 1963 would have no application. The substantive relief of declaration of invalidity of the subject deed in effect seeks a declaration that the conveyance deed is not binding upon the Plaintiff and is invalid so far as the Plaintiff is concerned. The limitation would be governed by Article 58 of the Schedule of the Limitation Act, 1963 which provides a period of three years to obtain a declaration and the time starts to run when the right to sue first accrues. Article 58 uses the expression "right to sue first accrues" and the period of limitation would commence from the day the right to sue first accrued upon the Defendant clearly and unequivocally threatening to infringe the right of the Plaintiff. The plaint pleads that on 19th April, 2008, the Defendant filed an application with the Tahsildar to transfer the suit property in the name of the Defendant. This act of the Defendant constituted an unequivocal threat to the right of the Plaintiff in the suit property and gave cause of action to the Plaintiff's pre-decessor to sue for declaration. The Plaintiff's father though contested the proceedings did not file any civil proceedings *qua* the invalidity of the deed of conveyance. Even accepting that the right to sue first accrued to the Plaintiff upon acquiring knowledge about the conveyance deed, it is pleaded in paragraph 23 of the plaint as under:

> **"23. Cause of action & limitation** : The Plaintiff came to know about the bogus deed of conveyance dated 19.3.2008 in about the year 2015. This suit is filed within the period of limitation as prescribed under limitation Act."

14. The contention that the Plaintiff acquired the right to sue upon death of his father is unsustainable. It is not the death of the Plaintiff's father, which gave rise to cause of action but at the very least, the acquisition of knowledge by the Plaintiff about the existence of the conveyance deed. Accepting the Plaintiff's own averments, the Plaintiff acquired knowledge in the year 2015 and the plaint was required to be filed within period of three years. In ***Nusli Neville Wadia vs Ivoery Properties and Others***[3], the Hon'ble Apex Court was concerned with the interpretation of Section 9A of CPC as it then existed in the statute book. The Hon'ble Apex Court considered the issue of limitation in context of Order VII, Rule 11 of CPC. It held that it cannot be laid down as proposition of law under Order 7 Rule 11(d) that the plaint cannot be rejected as barred by limitation. It can be said that it is permissible to do so mainly in a case where the plaint averment itself indicates the cause of action to be barred by limitation and no further evidence is required to adjudicate the issue.

15. Considering the pleaded case in the plaint, I am not inclined to accept that the issue of limitation is mixed question of fact and law requiring evidence to be led. The plaint is *ex-facie* barred by law of limitation on the facts stated in the plaint itself and the action is required to be terminated at the threshold.

16. The decision of ***Shanti Devi vs. Jagan Devi*** (supra) arose out of the suit filed seeking permanent injunction and in the alternative, joint possession and that the sale deed dated 14th June, 1973 which was also executed by the plaintiff be declared as fraudulent and void insofar as

3 (2020) 6 Supreme Court Cases 557.

share of Plaintiff is concerned. In this factual scenario, the Hon'ble Apex Court considered whether Article 65 or Article 59 is applicable to the suit. The Hon'ble Apex Court ruled out applicability of Article 59 as the same would take within its fold voidable and not void document and as the finding was that the Plaintiff had not executed the document, the document was void ab initio. The Hon'ble Apex Court held that the suit was filed for possession based on title and would be governed by Article 65 of Limitation Act. The decision is clearly distinguishable on facts as in the present case, the suit is not for possession based on title for applicability of Article 65 of Limitation Act.

17. The extension of the period of limitation by the Hon'ble Apex Court during COVID-19 pandemic applies where the period of limitation expired during COVID-19 pandemic. In the present case, the period of limitation for filing the suit expired in 2018 itself and therefore, the Plaintiff cannot seek benefit of extension of limitation by the Hon'ble Apex Court.

18. In light of above, the issue of limitation is answered against the Plaintiff. Resultantly, First Appeal stands dismissed.

19. Interim Applications, if any, do not survive for consideration and stand dismissed.

[Sharmila U. Deshmukh, J.]