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

NOTICE OF MOTION NO.871 OF 2017
WITH
INTERIM APPLICATION (L) NO.32248 OF 2026
WITH
SUIT NO.1039 OF 2016

Tilak Complex Co-operative Housing
Society Limited ...Applicant

In the matter between:

Pandurang @ Vikas Ramchandra Mhatre
And Anr. ...Plaintiffs.

Vs.

M/s. Tilak Enterprises And Ors. ...Respondents

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Mr. Anand Pai a/w. Ms. Lavanya Panicker, Ms. Smriti Sajeev, Mr. Saahil Sayyed, Mr. Sushant Patale and Mr. Gopal Kale i/b. Kalpana Jain	Advocate for the Plaintiffs in Suit No.1039/2016.
Mr. S.C.Naidu with Advocate Manoj Gujar, Advocate Divya Yajurvedi, Adv. Pradeep Kumar i/b. C.R. Naidu & Co.	Senior Advocate for Defendant No.19.
Mr. Rajiv Narula a/w. Mr. Tarang Jagtiani i/b. Jhangiani Narula & Associates	Advocate for Defendant No.1.

Ms. Vaishali Bhiungade	Advocate for Defendant Nos.5,7 and 17.
Mr. Shivajirao Patil a/w. Mr. Sandeep M. Deshmukh	Advocate for Defendant Nos.11 and 16.

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CORAM : S. M. MODAK, J.

DATE : 22nd OCTOBER 2026

P. C. :-

1. By the Notice of Motion defendant No.19 is making following prayers:

a. The Hon'ble Court be pleased to dismiss the present suit on the ground of delays and latches.

b. The Hon'ble Court be pleased to dismiss the present suit as it does not show any cause of action against this defendant.

2. Defendant No.19 is a co-operative society formed by the purchasers of units from building constructed on CTS No.1500A/1 forming part of larger piece of land bearing Survey No.100 Hissa No. 9, CTS No.1500 situated at village Eksar. Borivali, Mumbai 400103.

The building by name "Tilak Complex" is constructed by defendant No.1.

3. Whereas by way of Interim Application, Defendant No.1 is praying for following reliefs:

a. That this Hon'ble Court be pleased to reject the Suit under Order 7 Rule 11 of the CPC. The plaintiff has filed reply to motion as well as Interim Application. It is settled law that application as per Order 7 Rule 11 CPC needs to be decided only after going through the averments in the plaint and annexures. On this background I heard Mr. Pai, learned advocate for the plaintiffs. Mr. Narula, for defendant No.1 and Mr. Naidu, learned advocate for defendant No.19.

4. Defendant Nos.2 to 18 are the co-owners of the plot along with the plaintiff. It will be material to see what are the reliefs claimed in the suit in nutshell. They are as follows:

a. To declare that agreement dated 8th August 1996 executed with defendant No.1 which is unregistered and unstamped and non binding on the plaintiffs. In the said prayer clause

the plaintiff has bifurcated CTS No.1500 in two parts which are as follows:

a. CTS 1500, A/2 is a plot of land.

b. CTS No.1500 A/1 is a plot of land on which building is standing and the relief is in respect of unused FSI and TDR.

c. There is prayer to partition the entire suit property in the ratio of 1/7 amongst the plaintiffs and Defendant Nos.2 to 18.

d. There is alternative relief claimed and that is to direct defendant No.1 to pay consideration and compensation in respect of undeveloped portion and it is quantified at Rs.50 crores.

e. Permanent injunction is sought against defendant Nos.1 to 18 from creating third party interest in respect of suit property.

f. Prayer clauses e and f are the interim reliefs sought during the pendency of the suit.

5. It will be relevant to note the material averments in the plaint. They are as follows:

a. The suit property belongs to one Ramchandra Ganpat Mhatre who died intestate. Plaintiff and Defendant Nos.1 to 18 are his legal heirs and successors.

b. Defendant No.1 is a partnership firm registered as per the provisions of Indian Partnership Act. It is pleaded in paragraph 3 that plaintiffs are not claiming any relief against defendant No.19-Society in the present suit.

c. There is agreement dated 8th August 1986 with Defendant No.1. This is of the nature of development agreement as well as agreement for sale. Defendant No.1 has agreed to develop and agreed to purchase suit property from Savitribai except Nalini.

d. Defendant No.1 has agreed to develop suit property and pay consideration. It is grievance that defendant No.1 has not proceeded with the development within the time and manner as stated in the said agreement. There is inordinate and unjustified delay in performing the agreement. The said agreement is not stamped and not registered.

e. When the transaction took place, the family members were

not informed, many of them are uneducated and they are engaged in the business of fishing and agriculture.

f. Defendant No.1 has agreed to pay interest of 24% p.a. if there is default in making payment. Defendant No.1 has not fulfilled its promises and constructed building by name Tilak Complex on portion ad-measuring 5893.60 square meters (CTS 1500 A/1) thereby leaving portion 1989.80 sq. meters. (CTS 1500/A/2) .

g. As defendant No.1 has failed and neglected to perform their obligations, the plaintiffs as per notice dated 6th September 2011 have terminated the agreement. Though defendant No.1 has received notice he has not replied.

h. There is public notice dated 9th January 2012. (learned advocate Mr. Pai has emphasized on these notices and contended that defendant No.1 has not replied.)

i. Plaintiff has further pleaded in paragraph 8 that plaintiffs do not want to interfere in the portion of the suit property which is in occupation of defendant No.19.

j. It is further pleaded in paragraph 9 that notice is issued finally

on 17 October 2014 to defendant No.1 to hand over possession of subject portion of the property.

k. Plaintiff has further pleaded that defendant Nos.2 to 18 are the members from various branches and they are not cooperating the plaintiff in filing the suit and that is why they are joined as defendants for partition of the suit property.

l. Defendant No.1 is not having independent right in respect of the suit property and for last 27 years defendant could not develop entire suit property nor paid entire consideration.

m. The plaintiffs are not willing to perform the agreement because it has become inoperative or inpracticable.

6. Mr. Narula, learned advocate and Mr. Naidu, learned advocate has taken me through various averments in the plaint which says about issuance of notice in the year 2011 first and then in the year 2014. They have also invited my attention to the clauses of the agreement. The consideration has to be paid in cash and there was kind consideration in terms of four flats. The consideration is to be paid in installments.

7. Mr. Pai tried to argue that in fact as the agreement is not stamped

and registered that is why declaration is sought that it is not binding on the plaintiffs. He relied upon the provisions of Section 17(1)(b) of the Registration Act and Section 49 of the said Act. According to him if any instrument is creating right, title and interest in immovable property it is compulsorily registrable and it has not happened in this case. He relied upon the observations in the following cases:

i. *P. Kumarakurubaran vs. P. Narayanan & Ors.*[1],

ii. *Mahnoor Fatima Imran & Ors. vs. M/s. Visweswara Infrastructure Pvt. Ltd. and Ors.*[2],

iii. *Jageshwari Devi and Ors. vs. Shatrughan Ram,*[3] on the point of vagueness in the pleadings cannot be the ground for rejection of the plaint. He also relied on the averments in the reply and particularly paragraph 4 B.

Mr. Pai also submitted that in fact defendant no.19 has filed a Short Cause Suit No.1089/2012 before the City Civil Court against defendant No.1 for conveyance of the entire suit property.

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1 *Civil Appeal No.5622 of 2025 (Arising from SLP (C) No.2549/2021)*
2 *Special Leave Petition (C) No.1866/2024*
3 *(2007) 15 Supreme Court Cases 52*

8. As against this Mr. Narula, learned Advocate has relied upon the observations in the following cases:

i. *Hardesh Ores (P) Ltd. vs. Hede and Company,* [4]

ii. Raghwendra Sharan Singh vs. Ram Prasanna Singh,[5]*.*

Mr. Narula has also read the provisions of Article 58 of the Limitation Act which reads thus:

58	To obtain any other declaration.	Three years	When the right to sue first accrues.

Whereas Mr. Naidu, learned advocate has relied upon the following judgments on the point of Order 1 Rule 10 of CPC:

i. Mumbai International Airport Private Limited vs. Regency Convention Centre and Hotels Private Limited and Ors., [6]

ii. Kasturi vs. Iyyamperumal and Ors.[7]*,*

9. He has also submitted written submissions.

10. It is true that there is a difference in between the wordings *"right to sue first accrues"* and *"right to sue accrues".* Legislature has used the

4 *Civil Appeal No.2517 of 2007*
5 *(2020) 16 Supreme Court Cases 601*
6 *(2010) 7 Supreme Court Cases 417,*
7 *(2005) 6 Supreme Court Cases 733*

word first in Article 58.

11. If the averments in the plaint are read as a whole, what it transpires is mainly there are two facts:

a. About declaration that agreement is not binding on the plaintiffs.

b. About partition of the suit property.

12. Admittedly, this agreement was executed on 8 August 1986. It is also true that the plaintiffs are not seeking specific performance of this agreement though they have averred that defendant No.1 has not complied with the promises. The plaintiff is seeking declaration that agreement is not binding on them. It is also material to note that undivided CTS No.1500 was there but now it is divided in between 1500/A-1 ad-measuring 5893.60 square meters on which there is a building on which there is a society formed and another is 1989.80 square meters which is CTS No.1500/A-2. It is also true that agreement in question was in respect of entire portion of land.

13. It is true that in the plaint both grievances are made one is about non performance of the promises by defendant No.1 and also for unstamping and non registration. It is true at this juncture we are not

suppose to look into evidentiary value of the agreement in question. For deciding the application under Order 7 Rule 11 of CPC, we can certainly read its contents.

14. Mr. Pai tried to submit that there is no title created in favour of defendant No.1 because agreement is not stamped and unregistered. Whatever may be the reasons for termination of the said agreement, we have to see the averments in the plaint. When they are considered it is true that for the first time the plaintiff has issued notice on 6 September 2011 followed by public notice on 9 January 2012 and the notice date 17th October 2014 is pleaded as a final notice issued. As per the first notice of 6 September 2011 there is termination of the agreement. On this background if we consider the provisions of Article 58 which says about accrual of the cause of action on first occasion. In view of that if termination notice is issued on 6 September 2011 and if there is a period of limitation of three years certainly the prayer made in clause (a) 'that the agreement is not binding on plaintiffs' is certainly time barred. So I am inclined to accept the prayer of defendant Nos.1 and 19 on count of limitation. This is also applicable sofar as prayer clause (c) when there is alternative prayer for payment

of sum of Rs.50 crores, **the suit has to be dismissed insofar as these two prayers (a) and (c) are concerned. Prayer clause (d)** talks about permanent injunction that is an ancillary prayer which **is also to be dismissed**.

15. Sofar as prayer clause (b) is concerned which talks about partition of the property. Mr. Narula has argued that prayer for partition is also time barred and it is an ancillary prayer. He relied upon the provisions of Article 66 which reads thus:

66	For possession of immovable property when the plaintiff has become entitled to possession by reason of any forfeiture or breach of condition.	Twelve years	When the forfeiture is incurred or the condition is broken.

16. In fact I am not agreeable to this submission for the reason the period of 12 years is to be computed from occurrence of a forfeiture of conditions. It talks about possession. It is true as per clause 3 of the agreement in question certain payments are to be made in installments. The last payment of Rs.4 Lakhs is to be made within 6 months from the date of last installment. The period does not start from expiry of the period mentioned in the agreement for payment of installment. I

am inclined to consider the date of first notice i.e. 6th September 2012 wherein the plaintiff has informed to defendant No.1 of termination of agreement for non compliance of the terms of the agreement from the said date suit is filed within 12 years from the year 2016. The suit property is owned by the plaintiffs and defendant Nos. 2 to 18. As such suit for partition is filed in time.

17. It is true that the plaint cannot be rejected in part unless the reliefs are severable. If we see relief in prayer clauses (a) and (c) on one hand and prayer clause (b) on the other hand, we can say that both the reliefs are severable.

18. That is to prayer clauses (a) and (c) are in respect of the agreement dated 8th August 1986 whereas prayer clause (b) for partition is on the basis of relationship of the plaintiffs with defendant Nos.2 to 18.

19. So the suit can continue sofar as prayer clause (b) is concerned partition is sought in respect of the entire property. At the same time there is averment that building is constructed on CTS 1500/A/1 which is admeasuring 5893.63 square meters by defendant Nos.1 and defendant No.19 is the society. This Court feels that insofar as prayer

for partition is concerned, the presence of defendant Nos.1 and 19 is required because for adjudication of prayer for partition, they need to be heard. The observation in the judgments cited by Mr. Naidu are on different set of facts and hence ratio is not applicable to the present matter. Even though there is no reliefs sought against defendant No.19 Society, they are necessary party considering the fact that partition is sought in respect of land on which building belonging to society is situated. Defendant No.1 has constructed the said building and hence he is proper party. They are at liberty to put forth their case whether the property can be partitioned or not and it can be decided at a proper stage. In view of that I am inclined to pass the following order:

ORDER

i. Notice of Motion No.871/2017 is allowed in terms of prayer clause (a) in respect of reliefs sought in prayer clauses (a), (c) and (d) of the plaint.

ii. Interim Application is also allowed in terms of prayer clauses (a) in respect of reliefs sought in prayer clause (a), (c) and (d) of the plaint.

iii. Suit to continue in respect of prayer clause (b) of the plaint

against all the defendants.

[S. M. MODAK, J.]