

**ORDER BELOW EXHIBIT 24 In RCS No.382/2022**  
**(CNR NO.MHAH170039422022)**

1. This is an application filed by defendant under Order VII Rule 11(a) of The Code of Civil Procedure 1908 and Section 5 of The Limitation Act for rejection of the plaint.

2. The defendant contends that the plaintiff has filed this suit for perpetual injunction. In this suit cause of action for filing this suit is not mentioned. The plaint of the plaintiff be rejected under order 7 Rule 11(a) as it does not disclose a cause of action. As mentioned in the plaint the plaintiff has filed the application in Grampanchayat, Puntamba on 07/11/2008 therefore the plaintiff has knowledge of the suit property and its title since the year 2008. Thereafter, the plaintiff has filed this false suit after the period of 15 years. Therefore, the suit of the plaintiff is barred by limitation as per section 5 of The Limitation Act. The preliminary issue regarding limitation may be framed and suit be dismissed on the ground of limitation.

3. The defendant further contends that the plaintiff has no relation with the suit property. The brother of defendant Ashok Kashinath Malthankar died unmarried therefore there is no question that the plaintiff is his daughter. The name of plaintiff is Ujjwala Sanjay Kulthe and her parental house name is Ujjwala Ashok Malave therefore for this reason also the plaintiff has no relation with Ashok Kashinath Malthankar and the suit property. The plaintiff is misusing the process of Court by filing this suit on the basis of alleged illegal Will-Deed. This suit shall not be proceeded further unless the plaintiff files evidence as to the relation with deceased Ashok Kashinath Malthankar. The plaint be rejected for the grounds stated above.

4. The plaintiff filed say at Exh.27 and stated that she has mentioned the cause of action specifically in paragraph no.19 of the plaint. This paragraph no.19 of the plaint discloses the cause of action arose to file the present suit. For the purpose of consideration of the issues as to whether the plaint discloses any cause of action or not all the pleadings in the plaint to be looked into. The plaintiff in paragraph no.10 has specifically disclosed that, as since then the defendant neither caused any interference in the title and rights of the plaintiff in the suit property and the plaintiff was under bonafide belief that her title and claim over the suit property was fortified in pursuance to the registered Will-Deed. The Hon'ble Apex Court and Hon'ble High Courts have time and again held that, 'question of limitation is not always a pure question of law but a mixed question of fact and law. When several factual details have to be gone into decide said question of law, rejection of plaint at the threshold is not proper.' The defendant deliberately and willfully failed to peruse the paragraph no.19 of the plaint which in-fact discloses the cause of action which constrained the plaintiff to filed suit. Therefore, the allegation of the defendant that the plaint does not disclose cause of action is absolutely false. The application of the defendant be rejected with heavy cost of Rs.10,000/-.

5. Heard Ld. Advocate for the plaintiff and the defendant. Following points arise for my determination considering rival contentions of both the parties.

Sr.No.	POINTS	FINDINGS
1.	Whether the plaint is liable to be rejected under Order 7 Rule 11(a) of Code of Civil Procedure?	No.
2.	What Order ?	Application is Rejected.

The plaintiff has filed following case laws along with Exh.33:

1. 2015(8) SCC 331
2. 2108(6) SCC 422

**As to Points no.1 & 2 :**

6. Perused the record. Perused the written argument filed by the plaintiff at Exh.32. Perused the case laws filed by the plaintiff alongwith Exh.33. The learned Advocate for the defendant argued that the plaint be rejected under Order 7 Rule 11(a) of the Code of Civil Procedure. Order VII Rule 11 (a) of Code of Civil Procedure provides, '*(a) where it does not disclose a cause of action.*' As per settled law on the point of rejection of the plaint whole of the plaint, documents alongwith the plaint only can be considered.

7. On perusal of the plaint it appears that, the plaintiff has filed this suit for mandatory injunction, declaration and possession. The defendant contended in the application that, the plaintiff filed the suit after 15 years from the year 2008 and the suit is not within limitation as it should have been filed within the limitation. On perusal of the plaint the paragraph no.19 reveals that, the plaintiff has specifically mentioned the date of cause of action as June 2022. On perusal of the documents annexed with the plaint it also appears that, the plaintiff has sent legal notice to Pramod Malthankar and Gramsevak, Grampanchayat, Puntamba, Tal.Rahata on 04/07/2022. The plaintiff in the plaint also pleaded that in June 2022 she had knowledge that name of her father came to be deleted. The question of limitation is mixed question of facts and law. Considering the pleading of the plain-

tiff and documents annexed with the plaint it prima-facie does not appear that the suit is not filed within the limitation. The necessary issues can be framed at the stage of framing of issues. However, at this stage it will not be appropriate to reject the plaint at the threshold.

8. The plaintiff along-with this suit has filed Will-Deed and other documents on which the plaintiff has filed this suit. The plaintiff has also mentioned the cause of action in paragraph no.19 of the plaint. The pleading and averments in the plaint has to be read as a whole and cannot be read isolated. Apart from the objections of the defendant discussed above, on reading of the plaint of the present suit, it does not appear that, the plaint does not disclose a cause of action. Hence for the reasons aforesaid I answer point no.1 in the negative and in answer to point no.2, I pass the following order :

**ORDER**

Application is rejected.

Place : Rahata

Date : 15/06/2024

(S.S.Mulani)

3<sup>rd</sup> Jt. Civil Judge Junior Division.  
Rahata

**C E R T I F I C A T E**

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the Stenographer : P.S.Shinde  
Court : 3<sup>rd</sup> Jt. Civil Judge Jr. Dn., &  
Judicial Magistrate F.C., Rahata.  
Date of order : 15/06/2024  
Signed by the Presiding Officer : 15/06/2024  
on  
Order Uploaded on : 15/06/2024