

Order Below Exh. 133
In Special Civil Suit No. 1926/2022

1] By filing this application the defendant Nos. 5, 6, 7, 9 and 10 have prayed for rejection of plaint contending therein that suit is barred by limitation and, therefore, it is liable to be rejected under Order 7 Rule 11 (d) of the Code of Civil Procedure. It is the further contention of defendants that the purported cause of action mentioned by the plaintiffs for filing present suit it appears that it first arose on 29/11/2015 and then on 22/07/2019. It is categorically laid down in the Article 59 of Limitation Act, 1963 that any suit to cancel or set aside any instrument is to be filed within three years from the date on which the facts entitling the plaintiffs to seek such cancellation became known to him. On the above grounds, the defendants have prayed for rejection of plaint.

2] The plaintiffs have strongly contested this application by filing say at **Exh. 137** and submitted that the cause of action to the suit is properly mentioned by plaintiff in the plaint at para No. 13. it is further contended that the issue of limitation is mixed question of law and facts, the cause of action further arose when the property was sold and transferred to various purchasers on 16/03/2020 and, therefore the suit is filed well within limitation period. Hence, the plaintiffs have prayed to reject this application with costs.

4] Heard both sides at length. Perused the record.

5] Taking into consideration, prevailing circumstances in the case in hand, following points arose for my determination, I have given my findings with reasons thereof as under :-

Sr.No.	Points	Findings
1]	Whether it is just and necessary to reject the plaint under order 7 Rule 11(d) of C.P.C. as prayed for ?	No.
2]	What order ?	As per following order.

REASONS

6] As to point no. 1 and 2 :-

I have gone through the contents of application and say filed by respective parties to the suit. As the defendants have raised aforementioned legal points, therefore I have to go through the related legal provisions which are reproduced as under :-

O.7 R.11. Rejection of plaint :- The plaint shall be rejected in the following cases :-

- (a) where it does not disclose a cause of action,*
- (b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) Where the relief claimed is properly valued, but the plaint is written upon proper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Courts, fails to do so,*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- [(e) where it is not filed in duplicate ;*
- [(f) where the plaintiff fails to comply with the provisions of rule 9.]]*

7] I have gone through aforementioned legal provisions as well as contents of plaint, and objection raised by the defendants. I have gone through the oral as well as written notes of argument filed by the defendant and plaintiff vide **Exh. 137** and **141**, respectively. The defendants have mainly objected on the point of limitation. As per the settle legal position, the issue of limitation is mixed question of law and facts. At this stage, the limitation cannot be decided as it is not judicious to decide said issue. More so, cause of action to the present suit is described by the plaintiff in para No. 13 of the plaint. At this stage, the pleadings filed on record show that the plaintiffs has cause of action to file this suit and its truthness cannot be decide at this stage. The plaintiff relied upon the following case law i.e. in case of **Ram Prakash Guipta V/s. Rajiv Kumar Gupta & Ors.,** reported in **(2007) 10 SCC 59**, wherein it has been held as under :-

While considering an application under Order VII Rule 11 of CPC, the Court has to go through the entire plaint averments and cannot reject the plaint by reading only few lines/passages and ignoring the other parts of the plaint. The suit cannot be rejected at threshold under Order VII Rule 11(d) of the Code of Civil Procedure.

I have gone through the observations of Hon'ble their Lordship in the cited case law and its squarely applicable to the present case, it is so because that, on going through the entire plaint in the case in hand, the plaintiffs specifically averred that the cause of action further arose when the property was sold and transferred to various purchasers on 16/03/2020 and, therefore the objection raised by the defendants with regard to limitation cannot be seen at the initial stage.

8] In support of their applications, the defendants relied upon the following case laws :-

i) Amruta Kaluji Shejul V/s. Vithal Ganpat Wadekar reported in 2016 SCC Online Bom. 5054.

ii) Raghunath Singh V/s. Bricmore Infraprojects Pvt. Ltd., reported in 2022 SCC Online TS 2199.

iii) Dahiben V/s. Arvinbhai Kaluyanji Bhanusali reported in (2020) 7 SCC 366.

I have gone through the observations laid down by the Hon'ble their Lordships in the cited case laws. But the facts of the cited case laws and the facts of the case in hand are different, it is so because in the present case in hand, the plaintiffs specifically averred that the cause of action further arose when the property was sold and transferred to various purchasers on 16/03/2020 and, therefore the objection raised by the defendants with regard to limitation cannot be seen at the initial stage.

9] In the light of above discussion, the application filed by the defendants under Order 7 Rule 11(d) deserves to be rejected. Hence, I proceed to pass the following order. Accordingly, I proceed to pass the following order.

ORDER

The application **Exh. 133** stands rejected.

(D. T. Vasave)

Place :- 08/09/2023

Civil Judge, Senior Division Pune.

Certificate

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

Name of the Stenographer	V.L. Konda, Steno (Grade-II)
Name of the Court	D.T.Vasave, C.J.S.D.,Pune.
Date of Judgment/order	08/09/2023
Judgment/order signed by the P.O on	08/09/2023
Judgment/order uploaded on	11/09/2023

6 [Spl.C.S. No. 1926/2022 (Order on Exh.133)]

7 [Spl.C.S. No. 1926/2022 (Order on Exh.133)]

Certificate