IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.472 OF 2026
WITH
INTERIM APPLICATION NO.3354 OF 2026
IN
FIRST APPEAL NO.472 OF 2026

1. Mrs. Angeline Babu Nimma
Aged 71 yrs. Occupation : Tutor

2. Mr. Gilory Anthony Misquitta
Aged 68 yrs. Occupation: Service

3. Mrs. Racheal Hillary Misquitta
Aged 60 yrs. Occupation: Housewife

4. Mr. Shaun Hillary Misquitta
Aged 37 yrs. Occupation : service

5. Mr. Regan Hillary Misquitta
Aged 36 yrs. Occupation: service

All 1 to 5 residing at House No.52 St.
Francis Road, Vile Parle (West),
Mumbai-400 056

6. Mr. Troy Thomos Gowria
Aged 48 yrs. Occupation: Jobless

7. Ms. Olinka Thomos Gowria
(since deceased) died on 27-01-2026

8. Mr. Trevor Thomos Gowria
Aged 54 yrs. Occupation : service

9. Mrs. Priya Maruti Patil
Aged 56 yrs. Occupation : service

All 6 to 9 Indian adult Inhabitants residing at House No.126. St. Braz Road, Vile Parle (West), Mumbai-400 056 …Appellants (Org. Plaintiffs)

Versus

1. The Collector MSD, Mumbai
   State of Maharashtra, 10th Floor,
   Administrative Building

2. SRA (Slum Rehabilitation Authority),
   SRA Building, Anant Kanekar Marg,
   Bandra (East), Mumbai-400 051

3. MCGM
   Corporate body functioning under
   MCGM Act, K/East Ward, MCGM Building,
   Azad Road, Gundavali, Andheri (E),
   Mumbai-400 069

4. Panom Developer LLP,
   Partnership Firm Regd. under the LLP Act, 2008
   Through their authorized Signatory No.
   (1) Bharat J.Patel, (2) Dilip C. Modi &
   (3) P.U.C. Shah and Also attorneys of Defendant
   No.5 to 18 Nainesh Gandhi, K.R.D.N. Estate,
   2nd Floor, Off Aarey Road, Goregaon (East)

5. Mr. Lalit Ramdev Mishra
   Age & Occ. Not Known

6. Atmadev Ramdev Mishra
   Age & Occ. Not Known

7. Mr. Dinesh Ramdev Mishra
   Age & Occ. Not Known

8. Mr. Ashok Ramdev Mishra
   Age & Occ. Not Known

9. Mr. Anil Ramdev Mishra
   Age & Occ. Not Known

10. Mr. Lolarkh Matadin Mishra
Age & Occ. Not Known

11. Mr. Ramesh Matadin Mishra
Age & Occ.: Not Known

12. Mr. Vasant Matadin Mishra
Age & Occ. Not Known

13. Mrs. Durgadevi Lalji Pandey
Age & Occ. Not Known

14. Mrs. Kamladevi Vishwanath Dubey
Age & Occ. Not Known

15. Mrs. Gulabdevi Maheshnarayan Pandey
Age & Occ. Not Known

16. Mr. Rajkumar Ramkrishna Tiwari
Age & Occ. Not Known

17. Mrs. Shivdevi Radheyshyam Shukla
Age & Occ. Not Known

18. Mrs. Usha Kripashankar Tiwari

Serial No. 3 to 16 residing at
Bhagvanji Building, 40-A Room No.5 & 6
Old Nagardas Road, Andheri(East)
Mumbai-400 069

...Respondents
(Org. Defendants)

Mr. Suresh K. Mali for the Appellants/Applicants

Mr. Amogh Singh i/b Mr. Vijay Sharma for the Respondent No.4

CORAM : SHARMILA U. DESHMUKH, J.

DATE : JULY 27, 2026

JUDGMENT :

1. Heard. **Admit.** By consent, taken up for final hearing forthwith.

2. The First Appeal is at the instance of the original Plaintiffs being aggrieved by the impugned judgment and order dated 16th January 2026 passed by the City Civil Court at Borivali Division at Dindoshi, Mumbai, in Notice of Motion No. 3570 of 2018 under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 (for short `**the CPC')**, rejecting the plaint in L.C. Suit No. 2111 of 2014.

3. L.C. Suit No. 2111 of 2014 was filed seeking a declaration that the Defendants cannot interfere in the use and occupation of the suit premises, create third-party rights, and cannot submit the property for development, obtain consent of tenants/occupants in respect of the suit premises, i.e., land bearing Old Survey No. 32, Hissa No. 14, of Revenue Village Vile Parle, Taluka Andheri, Mumbai, admeasuring about 547.8 square metres. The plaint also sought a declaration that the Deed dated 11th April 1963 and the Agreement for Sale dated 9th June 1960 between Anthony Joseph Misquitta and Matadin Mangal Mishra and Ramdev Mangal Mishra are null and void and consequently, the Conveyance Deed registered with respect to Schedule IV is also null and void, and the Defendants do not get any right in the suit property and permanent injunction.

4. An application under Order VII Rule 11 was filed by the Defendant No. 4 seeking rejection of the plaint under Order VII Rule 11(b) and (d). In the affidavit in support of the Notice of Motion, it was pleaded that the suit is barred by the law of limitation, as the Plaintiffs are challenging documents executed in the year 1963, and the pleadings in the plaint show that the Plaintiffs had knowledge of the said documents since more than 17 years. An objection was also raised on the ground of valuation.

5. The application came to be resisted by the Plaintiffs, contending that the cause of action arose on 20th July 2014 when, on the basis of the appeal dismissal order dated 30th April 2014, the Plaintiffs obtained legal advice to file a civil suit. Insofar as the valuation is concerned, it was pleaded that the Plaintiffs have properly valued the suit. It was further pleaded that the suit had been filed in August 2014 and after a period of four years, the Notice of Motion was filed seeking dismissal, which is without merit.

6. The Trial Court, by order dated 16th January 2026, framed the necessary issue as to whether, from the statements in the plaint, the suit appears to be barred by law. The Trial Court, upon perusal of the plaint and its annexures, noted that the sum and substance of the Plaintiffs' case is that the Agreement for Sale dated 9th June 1960 and the registered document dated 11th April 1963 do not bear the signature of their father, Anthony Misquitta, and that no consideration was received by their father. It further noted that the Plaintiffs had come up with the case that the documents are forged, by reason of which Matadin Mishra and Ramdev Mishra did not get a valid title to the suit property, and resultantly neither to Defendant No. 4. It noted the pleadings in paragraph 15 of the plaint that the documents dated 9th June 1960 and 11th April 1963 were examined by a handwriting expert, whose opinion dated 25th September 1997 was that both documents do not bear the signature of Anthony Misquitta and expert opinion appended to the plaint to hold that the Plaintiffs had knowledge that the documents are forged and the right to sue accrued on 25th September 1997. It opined that the legal advice received by the Plaintiffs cannot postpone the cause of action, and accordingly held that the plaint is barred by limitation under Articles 58 and 59 of the Limitation Act, 1963.

7. Learned counsel appearing for the Appellants would submit that the Plaintiffs were pursuing proceedings before the revenue authorities and the cause of action accrued on 30th May 2012, when it was ordered by the City Survey Officer that, for claiming the ownership rights in the suit property, the Civil Court is to be approached. He submits that the opinion obtained by the Plaintiffs in 1997 was only in respect of the forgery and the same cannot constitute cause of action for filing the suit. He would submit that the entire plaint has to be read, which would show that a fraud has been committed, as on the basis of the forged documents, the suit property has been transferred first to Matadin Mishra and Ramdev Mishra and thereafter to the Defendant No. 4. He would further submit that the application under Order VII Rule 11 seeking rejection of the plaint came to be filed after a period of four years by Defendant No. 4 who has no right, title or interest in the suit property. He would further point out pleadings in paragraph 7 of the plaint denying right of Defendant No. 4 in the suit property.

8. *Per contra,* learned counsel appearing for the Respondent No.4 would draw attention of the Court to the pleadings in the plaint, and in particular paragraph 15 of the plaint, which speaks of the opinion having been obtained in the year 1997. He would further point out that the opinion is annexed as Exhibit "J" to the plaint, which makes a reference to the photocopy of the Indenture dated 11th April 1963. He submits that the Plaintiffs were, therefore, aware of the document dated 11th April 1963, in respect of which the relief is now being sought in the year 2014 by the Plaintiffs. He submits that under Articles 58 and 59 of the Limitation Act, 1963, the period of limitation commences from the date on which the right to sue first accrues and in the present case, as Plaintiffs acquired knowledge of the Deed of 1963, at least in the year 1997, the right to sue first accrued. He submits that, as the bar of limitation is evident on the face of the plaint, the suit has been rightly rejected. In support, he relies upon the following decisions:

i. **Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra)**[1]
ii. **Raghwendra Sharan Singh vs. Ram Prasanna Singh (Dead) by LRs**[2]

9. The point which arises for determination is whether the plaint is liable to be rejected under Order VII Rule 11(d) as being barred by law of limitation.

10. It is well settled that, for the purpose of adjudicating an application under Order VII Rule 11, it is only the averments in the plaint and the documents annexed to the plaint which are germane. The plaint has to be read in a meaningful manner in order to ascertain whether it is barred by law, which includes the law of limitation. The substantive relief sought by the Plaintiffs was a declaration that the registered Sale Deed dated 11th April 1963 and the Agreement for Sale dated 9th June 1960 between Anthony Joseph Misquitta and Matadin Mangal Mishra and Ramdev Mangal Mishra are null and void. The other reliefs were consequential to the grant of the declaration about the indentures being null and void. The case set forth in the plaint is that the Plaintiffs are the legal heirs of Anthony Joseph Misquitta, who owned the suit property through his predecessors. Paragraph 7 of the plaint pleads about the Agreement for Sale dated 26th May 1960, alleged to have been signed and executed by the Plaintiffs' father on

1 (2020) 7 SCC 366
2 Civil Appeal/2960/2019 decided on 13/03/2019

9th June 1960 in favour of Matadin Mangal Mishra and Ramdev Mangal Mishra, which is a forged and fabricated document and consequently, the execution of the conveyance by Defendants Nos. 5 to 18 in respect of the suit premises is null and void. It is pleaded that the Defendants succeeded before the Konkan Division Commissioner on the basis of the Conveyance Deed dated 13th January 2011 and thereafter, the Plaintiffs have approached the Civil Court for appropriate order and declaration that the registered Deed dated 11th April 1963, the Agreement dated 9th June 1960 and the Conveyance Deed dated 13th January 2011 are null and void. Paragraph 15 of the plaint reads as under:

> "15. The plaintiffs state that since they did not have the copy of the conveyance Deed back then. But along with the copy of the index II, which contained the forged signature of Mr. Anthony Joseph Misquitta, the plaintiffs went ahead and had appointed a handwriting Expert Mr. Mahesh Wagh, Examiner of Document, Addl. Chief State Examiner of Document, CID having his address at 15-H Ambe Wadi, Girgaum Road, Mumbai :- 400 004, to verify the signature on the said document i.e. the agreement for sale dated 9th June 1960 and the deed of conveyance dated 11th April 1963 Mr. Wagh after perusing many documents having signature of Mr. Anthony Joseph Misquitta has given his written opinion dated 25th September, 1997. Annexed hereto and marked as **Exhibit "J"** is the copy of the said opinion given by Mr. Mahesh Wagh."

11. The cause of action is pleaded in paragraph 45 to have arisen on 20th July 2014, when the Plaintiffs obtained legal advice that the revenue record would not suffice and that a Civil Suit was required to be filed. To the plaint is annexed the opinion of the handwriting expert dated 25th September 1997, which is referred to in paragraph 15 of the plaint. The opinion records that the expert had examined the questioned signatures of Anthony Joseph Misquitta on the xerox copy of the Indenture dated 11th April 1963 and, upon comparison with the standard signatures, was of the opinion that the questioned signature was not written by the writer of the standard signatures. It is, therefore, the Plaintiffs' own case that a photocopy of the Indenture dated 11th April 1963 was available with them and was submitted to the handwriting expert, who gave his opinion in the year 1997. The execution of the Indenture of 1963 was, therefore, within the knowledge of the Plaintiffs in the year 1997.

12. The pleadings in the plaint is that the father of Defendants Nos. 5 to 18, i.e., the legal heirs of Matadin Mishra and Ramdev Mishra, had prepared forged and fabricated documents and got them registered on 11th April 1963, who did not have any right in the suit premises and as the Defendant No. 4 claims through Defendants Nos. 5 to 18, Defendant No. 4 also does not have any right, title or interest in the suit premises. The pleadings of forgery are based on the expert opinion obtained in the year 1997. The relief sought is a declaration that the deeds are forged and fabricated. Therefore, the limitation under Article 58 of Limitation Act, 1963 is triggered when the right to sue first accrued. Article 58 uses the expression “first accrued”, which would be the date of acquiring knowledge of existence of the alleged forged documents.

13. The documents of 1960, 1963 and 2011 are sought to be challenged in the year 2014 based on an illusory cause of action of legal advice. Before this Court, the submission canvassed was that the cause of action had arisen upon the order passed by the City Survey Officer directing the Plaintiffs to approach the Civil Court for adjudication of their civil rights in respect of the suit premises. It is not the order of the survey officer which would give rise to a cause of action to the Plaintiffs to file the suit, but the knowledge of the Deed of 1963, in the year 1997, which would trigger the period of limitation. The suit, which has been filed in the year 2014, is *ex facie* barred by limitation upon a reading of the plaint and the documents appended thereto.

14. It is well settled that an application under Order VII Rule 11 of CPC can be filed at any stage of the proceedings. It is also no answer to say that the Defendant No. 4 had no right to file the application, as the Defendant No. 4 claims title through the Deed of Conveyance which is sought to be assailed by the Plaintiffs and Defendant No.4 has been impleaded as a party.

15. In the case of ***Nusli Neville Wadia v. Ivory Properties & Ors.***[3]**,** one of the issues which was considered by the three-Judge Bench of the Hon'ble Apex Court was regarding limitation being a mixed question of law and fact in the context of provisions of Order VII Rule 11 of the CPC. It was held by the Hon'ble Apex Court that it cannot be laid down as a proposition of law under Order 7 Rule 11(d) that a plaint cannot be rejected as barred by limitation. It further held that it is permissible to do so in a case where the plaint averment itself indicates the cause of action to be barred by law of limitation and no further evidence is required to adjudicate the issue. It noted that the plaint has to be rejected, if any law bars it as per the averments made in the plaint.

16. In the case of ***Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra)*** (supra), the Hon'ble Apex Court has held in paragraph 23.14 that the power under Order VII Rule 11 may be exercised by the Court at any stage of the suit. It further held in paragraphs 25, 26, 27 and 28 as under:

> "**25.** The Limitation Act, 1963 prescribes a time-limit for the institution of all suits, appeals, and applications. Section 2(j) defines the expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suits, appeals or applications. Section 3 lays down that every suit instituted after the prescribed period, shall be dismissed even though limitation may not have been set up as a

3 (2020) 6 SCC 557

defence. If a suit is not covered by any specific article, then it would fall within the residuary article.

26. Articles 58 and 59 of the Schedule to the 1963 Act, prescribe the period of limitation for filing a suit where a declaration is sought, or cancellation of an instrument, or rescission of a contract, which reads as under:

"Description of suit	*Period of limitation*	*Time from which period begins to run*
58. To obtain any other declaration.	Three years	When the right to sue first accrues.
59. To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him."

The period of limitation prescribed under Articles 58 and 59 of the 1963 Act is three years, which commences from the date when the right to sue first accrues.

27. In *Khatri Hotels (P) Ltd. v. Union of India-(2011) 9 SCC 126,* this Court held that the use of the word "first" between the words "sue" and "accrued", would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. That is, if there are successive violations of the right, it would not give rise to a fresh cause of action, and the suit will be liable to be dismissed, if it is beyond the period of limitation counted from the date when the right to sue first accrued.

28. A three-Judge Bench of this Court in *State of Punjab v. Gurdev Singh-(1991) 4 SCC 1 : 1991 SCC (L and S) 1082,* held that the Court must examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time. The words "right to sue" mean the right to seek relief by means of legal

> proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted. Order 7 Rule 11(d) provides that where a suit appears from the averments in the plaint to be barred by any law, the plaint shall be rejected."

17. Applying the law laid down by the Hon'ble Apex Court to the facts of the present case, the Plaintiffs have pleaded that in respect of the Indenture dated 11th April 1963, the Plaintiffs had obtained the handwriting expert's written opinion on 25th September 1997. It is not the obtaining of legal advice in the year 2014 which would constitute cause of action for filing the suit, but the knowledge of the document being a forged document on 25th September 1997 which infringes the Plaintiffs' right claimed in the suit property and gives rise to cause of action. By pleading an illusory cause of action of obtaining legal advice, the suit has been filed in an attempt to overcome the bar of limitation.

18. The pleadings in the plaint make it clear that the suit is barred by the law of limitation, as it seeks to challenge the Indentures of 1960 and 1963 in the year 2014. The period of three years for the purpose of limitation will have to be computed from the date of knowledge of the Plaintiffs, i.e., in the year 1997. The suit is hopelessly barred by limitation.

19. The Trial Court has examined the pleadings in the plaint, the documents produced, and, in particular, the expert opinion dated 25th September 1997, to hold that the right to sue first accrued to the Plaintiffs on 25th September 1997, and the cause of action arose on 25th September 1997. The Trial Court has rightly held that the suit is barred by limitation and rejected the plaint under Order VII Rule 11(d) of the CPC.

20. In light of the discussion above, the plaint is liable to be rejected under Order VII Rule 11(d) of CPC, being barred by limitation. Resultantly, the First Appeal fails and stands dismissed.

21. Interim Application does not survive for consideration and is disposed of.

[SHARMILA U. DESHMUKH, J.]