

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 1090 OF 2012**

Shri Kaluram Maruti Dange and
Ors

..Petitioners

Vs

Shri Dattu Rambhau Dange and
Ors.

.. Respondents

Mr. P.B. Shah , Advocate for the Petitioners.

Mr. Sanjay Kshirsagar, Advocate for Respondents no. 1 to 4, 6 to 12, 14 and 15.

**CORAM : R.G.KETKAR,J.
DATE : 02/07/2015**

PC:

1. Heard Mr. P.B.Shah, learned counsel for the petitioners and Mr. Sanjay Kshirsagar, learned counsel for respondents no. 1 to 4, 6 to 12, 14 and 15 at length.
2. By this Petition under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), original defendants have challenged the Judgment and order dated 12.10.2012 passed by the learned 4th Jt. Civil Judge, Sr.Dn., Pune below Exhibit-24 in Special Civil Suit No.725 of 2011. By that order, the learned trial Judge dismissed the application taken out by the defendants under Order 7, Rule 11(a), Order 7, Rule 11(b) and Order 7, Rule 11(d) for rejection of Plaint.
3. In support of this Petition, Mr. Shah strenuously contended

that from the assertions made in the Plaint, in particular paragraphs 13 to 16, it is evident that the suit is clearly barred by limitation. He submitted that in paragraph 13, the plaintiffs asserted that after the death of Rambhau Laxman Dange, father of plaintiff no.1, they demanded partition from the father of defendants 1, 12 to 14, i.e. Maruti Laxman Dange. However, on one pretext or the other, he did not concede the demand made by the plaintiffs. Mr Shah submitted that Maruti died on 6.3.1996. Thus, during his life time, the partition was specifically demanded and the same was specifically refused. The cause of action, therefore, accrued to the plaintiff for instituting suit for partition prior to 1996. The suit is, however, instituted in the year 2011 which is clearly barred by limitation and more particularly Article 110 thereof.

4. Mr. Shah submitted that in paragraph 14, it is asserted that Shevantabai, mother of plaintiffs 7 to 9 had demanded partition from Maruti Laxman Dange. Even Rangubai, grand mother of plaintiffs no.7 to 9 also demanded partition and separate possession from Maruti Dange. Rangubai died in 1982. Thus, during her life time, she had demanded partition and the same was refused. In any case, cause of action for instituting the suit accrued during the life time of Rangubai. Suit is instituted in the year 2011 and, therefore, is barred by limitation in view of Article

110 of the Limitation Act.

5. He further submitted that in paragraph 15 the plaintiffs clearly pleaded ouster. In that the plaintiffs asserted that after the death of Maruti, property came jointly to the shares of plaintiffs and defendants 1 to 14. However, defendants no.1 to 14 did not effect partition by metes and bounds and retained possession. This clearly amounts to ouster. Thus, in view of Article 110 of Limitation Act, suit is clearly barred by limitation.

6. In any case, he submitted that on 25.9.1980 registered partition deed was executed. Mutation entry was certified in December, 1980. Thus, the period of limitation started from December, 1980 and suit is instituted in 2011. He submitted that explanation offered in paragraph 16 that on 7.3.2009 the plaintiffs perused the revenue record and came to know that the partition was effected on 25.9.1980, is solely with a view to bringing the suit within limitation. Since the partition deed is a registered instrument, the plaintiffs have constructive knowledge. For all these reasons, he submitted that the suit is clearly barred by limitation.

7. On the other hand, Mr. Kshirsagar supported the impugned order. He submitted that while considering the application under Order 7, Rule 11, Court has to consider the averments made in the Plaint in their entirety. The Court has to proceed on the

premise that the averments made in the plaint are correct and if the averments made in the plaint are taken to be correct in their entirety, the Court has to find out whether the suit is barred by limitation. He further submitted that reading of the plaint in its entirety does not disclose that the plaintiffs have pleaded ouster so as to attract Article 110 of the Limitation Act. The learned trial Judge rightly held that the question of limitation is a mixed question of law and facts which will have to be determined at the stage of final hearing of the suit and the Plaint cannot be rejected at the threshold.

8. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. Article 110 of the limitation Act reads as under:

Description of Appeal	Period of Limitation	Time from which period begins to run
110. By a person excluded from a joint family property to enforce a right to share therein	Twelve years	When the exclusion becomes known to the plaintiff.

Perusal of Article 110, extracted herein above, shows that suit can be instituted by a person excluded from a joint family property to enforce a right to share therein within a period of 12 years when the exclusion becomes known to the plaintiff.

Perusal of paragraphs 13 to 16 of the Plaint does not show that the plaintiffs have pleaded theory of ouster. The plaintiffs have contended that though the partition was demanded from Maruti, he did not concede that request. That, however, does not mean that the plaintiffs accepted that they have been ousted from the suit property. Understood thus, it cannot be said that the suit is barred by limitation under Article 110. If the plaint in its entirety is read, it does not disclose that it is barred by limitation and, therefore, Plaint is liable to be rejected under Order 7, Rule 11(d). In view thereof, no case is made out under Section 115 of C.P.C. Petition fails and the same is dismissed.

9. At this stage, Mr. Shah orally applies for continuation of ad-interim order dated 7.1.2013 for a period of four weeks from today. In view thereof, notwithstanding dismissal of C.R.A., ad-interim order dated 7.1.2013 shall remain in force for a period of four weeks from today. Order accordingly.

(R.G.KETKAR, J.)