

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**REVIEW APPLICATION ST. NO.10029 OF 2014
IN
CIVIL REVISION APPLICATION NO.148 OF 2013**

- 1) Kundlik S/o. Jayanta Ukirde,
Age-67 years, Occu:Agril.,
- 2) Tulsabai W/o. Appa Ukirde,
Age-65 years, Occu:Agril.,
- 3) Vaijnath S/o. Appa Ukirde,
Age-51 years, Occu:Agril.,
- 4) Bhimrao s/o. Appa Ukirde,
Age- 48 years, Occu:Agril.,
- 5) Annasaheb S/o. Appa Ukirde,
Age-42 years, Occu:- Agril.,
- 6) Dattu S/o. Appa Ukirde,
Age-37 years, Occu:Agril.,
- 7) Eknath S/o. Dagdu Ukirde,
Age-70 years, Occu:Agril.,
- 8) Prabhakar S/o. Dagdu Ukirde,
Age-47 years, Occu:Agril.,
- 9) Champabai W/o. Baliram Ukirde,
Age-Major, Occ:Agril.,
- 10) Dadasaheb S/o. Baliram Ukirde
Under Guardianship of
Champabai W/o. Baliram Ukirde,
Age-Major, Occu:Agril.,

- 11) Jankabai W/o. Bhanudas Ukirde,
Age-Major, Occu:Agril.,
- 12) Deepak S/o. Bhanudas Ukirde
Under Guardianship of
Jankabai W/o. Bhanudas Ukirde,
Age-Major, Occu:-Agril.,
- 13) Ganesh S/o. Bhanudas Ukirde,
Under Guardianship of
Jankabai W/o. Bhanudas Ukirde,
Age-Major, Occu:Agril.,
- 14) Trimbak S/o. Gunaji Ukirde,
Age-60 Years, Occu:Agril.,
- 15) Devidas S/o. Gunaji Ukirde,
Age-55 Years, Occ:Agril.,

All the applicants R/o. Karmad,
Through their Power of Attorney holder,
Damodhar S/o. Ramrao Karmadkar
Age-59 Years, Occ:Agril.,
R/o-Karmad, Tq. & Dist-Aurangabad.

...APPLICANTS

VERSUS

- 1) Shobhabai W/o. Navinchandra Patni,
Age-Major, Occu:House hold,
R/o. Plot No. 16, Abhinav Gruh
Nirman Sanstha, Maya Nagar,
N-2, Cidco, Aurangabad,
- 2) Baban S/o. Pandharinath Ukirde,
Age-Major, Occu:Agril.,
R/o-Karmad Tq. & Dist. Aurangabad,

- 3) Suryabhan S/o. Pandharinath Ukirde,
Age-Major, Occu:Agril
R/o-As above,
- 4) Shashikalabai W/o. Pandharinath Ukirde,
Age-Major, Occu:Agril,
R/o-As above.

...RESPONDENTS

...
Mr.P.K. Lakhotiya Advocate with Mr. P.P.
Kothari Advocate for Applicants.
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CORAM: A.I.S. CHEEMA, J.

DATE OF RESEVING ORDER : 14TH MARCH, 2016
DATE OF PRONOUNCING ORDER : 5TH APRIL, 2016

ORDER :

1. Heard counsel for the Applicants. This Review Application was tendered along with delay condonation application bearing Civil Application No.6811 of 2014 which has been allowed. As per directions which were given on 29th February 2016 as well as 7th March 2016, counsel for Applicants have been heard regarding the Review Application which has been tendered, to consider if it is

worth admitting.

2. Learned counsel for the Applicants, who were Respondents in the Civil Revision Application No.148 of 2013, repeated the submissions which were made by him at the time of decision of the Civil Revision Application. Reference has been made to the provisions of Article 58 of the Limitation Act. The counsel has now taken out Rulings relating to Article 58 of the Limitation Act as well as Order 7 Rule 11 of the Code of Civil Procedure. He made reference to Judgments in the following matters:

I) Ramesh B. Desai and others vs. Bipin Vadilal Mehta and others, (2006)5 S.C.C. 638,

II) Daya Singh and another vs. Gurdev Singh (Dead) by L.Rs. and Others, (2010) 2 S.C.C. 194,

III) Dr. Suresh Bhalchandra Shetye vs.

**Shri Anil Vasant Pednekar and others,
2011(7) ALL M.R. 619,**

**IV) Kisanlal and others vs. Harischandra
and another, 2014 (5) Bom. C.R. 115,**

**V) Geeta Patkar of Mumbai vs. Chandrakant
Kantilal Shah of Mumbai and others, 2015
(5) ALL M.R. 794.**

. Referring to the Judgments, the points agitated earlier have been repeated. The learned counsel submitted that the question of limitation is a mixed question of facts and law and that the Plaint is required to be read as it is, accepting the same to be correct and thus according to him, at the present stage of the matter, the Plaint could not have been rejected as time barred.

3. I have gone through the Rulings submitted by the learned counsel. They can be distinguished on facts. In fact this Court has, while deciding the Civil Revision Application, referred to all

the necessary and relevant aspects of the matter. In the grounds raised in the Review Application, it is claimed that Section 14 of the Limitation Act provides exemption for delay not only on the ground of 'defect of jurisdiction' but also 'other cause of like nature'. On this basis the further ground claims that when the matter was being pursued in the Revenue Court and the same was rejected on the ground of limitation, the same deserves to be treated as 'other cause of like nature'. One of the ground claimed is that in Writ Petition No.8045 of 2009 which arose from revenue proceedings, this Court had observed that the challenge was being raised to non conversion of mutation entry effected 23 years back and the delay was exorbitant. That, this Court had observed that mere mutation entry will not confer title and the Petitioner may resort to appropriate remedies in the Civil Court. On such basis, ground raised is that the civil remedy now resorted to by filing Civil Suit could not be barred.

4. Going through the material available, there is no substance in the grounds raised that the observations of this Court in Writ Petition No.8045 of 2009 (Kundlik s/o Jayanta Ukirde and others vs. Shobhabai w/o Navinchandra Patni and others) which arose with reference to the mutation entry could be so read so as to give benefit of the time spent pursuing matter in Revenue Court for getting the revenue entry set aside to take benefit under Section 14 of the Limitation Act. Even if suppose the revenue proceedings had been allowed and the revenue entry had been set aside, that would not have done away with the requirement of challenging the sale deed if the Petitioners were agitated by the sale deed.

5. Learned counsel for the Petitioners has claimed that the Plaint in R.C.S. No.1600 of 2012 needs to be read as it is. For the sake of convenience, relevant paras of the Plaint need to

be reproduced. Para 10, 11, 19 and 21 of the
Plaint (See Record and Proceeding of Civil
Revision Application No.148 of 2013) are
reproduced as below:-

"10. The Plaintiffs says and submit that, in the month of Jan.08, one of the relative of the plaintiffs, Mr. Damodhar Ramrao Karmadkar (Ukirde) informs the plaintiffs that the name of plaintiff or their fathers name are not appeared in the 7/12 extracts of Gut No.26.

11. The plaintiffs says and submit that, immediately thereafter, plaintiffs approached to the authorities and obtained all the mutation of Gut no.26 and after going through the mutation all the plaintiffs got shocked and surprised. The Mutation entry no.752 dt. 10.1.1985 shows that plaintiff Kundlik Jayanta and Maruti Appa for their father Jayanta Madhav, Maliram Dagadu for his father Dagadu Ramchandra, and Guna Ramchandra Tukaram Nana for themselves had transferred their share to their Pandharinath Mhasu the father of Respondent No.2 and 3 and mutation entry taken on the basis of partition deed which alleged to be executed by the above person. The copy of mutation entry no.752 is enclosed herewith

for kind perusal of this court.

.....

19. The plaintiffs says and submit that, in order to challenge mutation entry no.752 dt. 10.1.1985 and 816 dt.14.5.1987 the plaintiff filed ROR appeal before D.S.O. Aurangabad bearing case no. 2008/MAG/ROR/CR-41 on 2.4.2008 and same is registered on 4.4.2008 and thereafter on the count of delay the appeal came to be dismissed on 6.7.2009. The copy of the same is annexed herewith for kind perusal of this Hon'ble Court.

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21. The plaintiffs says and submit that, as the after knowing the fact on Jan.2008 about the illegal mutation entry as well as illegal sale deed the present plaintiff filed appeal before S.D.O. Aurangabad on 2.4.2008 and the same came to be dismissed on 6.7.2009 against the same present plaintiffs preferred W.P. no.8045 of 2009 in Nov. 2009 and on 27.9.2010 Hon'ble High Court of Bombay Bench at Aurangabad dispose of the petition holding that the plaintiffs may resort to appropriate remedies in civil court. Hence though the cause of action arose on Jan. 2008 till

27.9.2010 the present plaintiff persuaded the remedy before revenue authority hence the period of Jan. 2008 till 27.9.2010 would not come in way in filing the present suit as this span of time consumed in fighting the litigation before revenue authority."

[Emphasis supplied.]

6. If the above pleadings of the Plaintiff itself are perused, it is apparent that the Petitioners themselves were aware that the cause of action for alleged illegal mutation entry as well as alleged illegal sale deed arose in January 2008. Even if the Plaintiff is read as it is, which this Court has already done while deciding the Civil Revision Application, I do not find that there is any error apparent on the face of record. If cause of actions arise relating to two different acts (like mutation entry and sale deed in this matter) for which two different remedies need to be pursued (one before Revenue Authorities and another in Civil Court) and party chooses to pursue remedy only regarding one act and fails,

the party cannot seek to set off that period for pursuing the remedy for other act, resorting to Section 14 of the Limitation Act. Suppose the Revenue Entry was set aside, would that have satisfied the cause of action regarding sale deed? Before Revenue Authorities setting aside of mutation entry was sought and it cannot be said to be "same matter in issue" under Section 14 of the Limitation Act. The Applicants are unable to show that there was material evidence which remained to be brought before the Court or there is error apparent on face of record and thus it is necessary to reconsider the matter.

7. There is no substance in the Review Application tendered. The admission of the Review Application is declined.

[A. I. S. CHEEMA, J.]