

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 159 OF 2019

Ramchandra Rabhaji Patole and Others

..APPLICANTS

VERSUS

Prabhudhar Bhimraj Patole and Others

..RESPONDENTS

Mr. A.D. Shinde, Advocate for applicants

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**CORAM : R.G. AVACHAT, J.
DATED : 09th SEPTEMBER, 2019**

PER COURT :

Heard.

2. The challenge in this revision application is to order dated 05th July, 2019 passed by learned Joint Civil Judge, Senior Division, Newasa in a suit, being Regular Civil Suit No. 368 of 2018. By the impugned order, prayer of the defendants in application (Exh.36) for rejection of plaint has been turned down.

3. Learned Counsel for applicants submits that partition of family properties took place way back in 1987. The effect of partition has been reflected in the revenue record by virtue of Mutation Entry No. 1359. Brother of plaintiff has given admission in that regard before the revenue authorities. According to learned Counsel, the suit is also barred by limitation.

4. The learned Counsel for applicants has relied on the following authorities :-

(i) Order dated 29th July, 2019 passed by Delhi High Court in Sh. Rajinder Kumar Kapur & Anr. Vs. Sh. Madan Mohan Lal Kapur & Anr.

(ii) Sopan Sukhdeo Sable Vs. Assistant Charity Commissioner, 2004 DGLS(SC) 77

(iii) Order dated 02nd September, 2019 passed by Supreme Court in Civil Appeal No. 6760 of 2019 in Colonel Shrawan Kumar Jaipuriyar @ Sarwan Kumar Jaipuriyar Vs. Krishna Nandan Singh and Anr.

5. Rejection of plaint was sought on the ground that the plaint does not disclose cause of action and the suit is barred by limitation. It needs no mention that to consider the prayer of rejection of plaint, plaint has to be read in its entirety. Nothing more is to be looked into.

6. I have carefully perused the plaint. The plaintiff and the defendants are close relations. One Vitthal Bhaga Patole was their common ancestor. Properties in the suit are said to have belonged to joint family. It is also averred in the plaint that no partition of suit properties has ever taken place. Reading of plaint would, undoubtedly, suggest the plaintiff to have cause of action. It is stated in the plaint that properties in the suit are joint family properties. I have perused Mutation Entry no. 1359 that took place in

January 1987. The mutation was effected pursuant to application moved by all the sons of Vitthal Bhaga Patole and his five brothers requesting for recording lands in their names separately.

7. The applicants may be true, but the fact is clear that mutation entry does not disclose in so many words that the partition of family properties took place and the mutation entry is the evidence thereof. If the suit is vexatious, as alleged by the applicants, they may be entitled for exemplary costs. Be that as it may, averments in the plaint cannot be said to have not disclosed the cause of action. In the given facts and circumstances of the case, the issue of limitation would be a mix question of facts and law. Since, according to the applicants, partition took place way back in 1987 and the suit filed after 30 years is barred by limitation. Whether the partition of family properties did take place, would be the material fact in issue in suit. The authorities, relied upon, have no bearing on the facts of the case in hand. Civil revision application is therefore, dismissed.

(R.G. AVACHAT, J.)

SSD