

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

CIVIL REVISION APPLICATION NO. 160 OF 2019

Hasina w/o Musa Patel and others	... Applicants
Versus	
Sandu Yasin Patel	... Respondent

....
Mr. Subhas P. Tilve, Advocate for applicants.

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CORAM : R. G. AVACHAT, J.

RESERVED ON : 11th SEPTEMBER, 2019

PRONOUNCED ON : 01st OCTOBER, 2019

PER COURT :-

1. Heard.
2. The challenge in this revision application is to the order dated 30.07.2019 passed by the Civil Judge, Junior Division, Khultabad, District Aurangabad, on application Exhibit-24 in Regular Civil Suit No.12/2018. By the impugned order, the application for rejection of the plaint, came to be dismissed. The defendants in the said suit have, therefore, preferred this revision application.
3. The respondent-plaintiff filed the said suit for partition, separate possession, declaration and perpetual injunction. The relief of

declaration was for declaring the Gift Deed No.261/2015 dated 11.03.2015 executed by late Putlabee in favour of her daughter Hasina – applicant No.1, to be void and non est.

4. The rejection of the plaint was sought for on the ground of limitation and want of cause of action.

5. Learned counsel for the applicants would submit that the partition of the land took place way back in 1988. The suit land originally belonged to Shaikh Yasin s/o Shaikh Amir. He had two wives, namely, Putlabee and Halimabee. On the demise of Shaikh Yasin, the suit land was partitioned between Putlabee and Halimabee. The partition has been reflected in the revenue record. The applicants are the daughters of Putlabee. The respondent-plaintiff is the son of Halimabee. He has no right, title or interest in the land came to the share of Putlabee. He has, therefore, even no locus to take exception to the gift-deed/Hiba executed by late Putlabee in the name of her daughter - Hasina. Learned counsel would further submit that the respondent-plaintiff therefore did not have the cause of action to file the suit. The plaint was, therefore, liable to be rejected.

6. The suit land admeasures 99 R. Yasin was survived by his two widows, namely, Putlabee and Halimabee. The plaintiff-respondent is

the son of deceased Yasin Shaikh and Halimabee, while the applicants-defendants are the daughters of Putlabee. Necessarily, on the demise of Yasin Shaikh, the suit land came to be inherited by the two widows and their children. Learned counsel may be right in contending that the plaintiff did not have right, title and interest in the property inherited by his step-mother Putlabee.

7. The question is whether the partition has already been effected way back in 1988 and, therefore, the suit filed in 2015 is barred by limitation and even for want of cause of action.

8. The trial Court has rightly observed that the prayer for rejection of plaint could only be considered on the basis of averments made in the plaint. The plaintiff-respondent did not admit that the partition of the property took place in February-1988 or at any time in the past.

9. On demise of Yasin Shaikh, by virtue of mutation entry No.110, the land *Gat* No.178 came to be recorded in the name of Putlabee and Halimabee in equal share. The said entry in the revenue record is not an evidence of partition. On demise of Yasin Shaikh, his widows and children inherited the property as joint tenants. The plaintiff-respondent filed the suit for partition and setting aside the deed of gift executed by late Putlabee. The suit for partition is governed by Article

65 of the Limitation Act, 1963. Such suit is barred by limitation only when the defendants would perfect their title by adverse possession. The issues raised can only be answered after trial of the suit.

10. The trial Court has rightly rejected the application Exhibit-24. The revision application, is thus, liable to be rejected.

11. The Civil Revision Application, is therefore, rejected.

[R. G. AVACHAT, J.]

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