

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CIVIL REVISION APPLICATION NO. 06 OF 2020

Hemant s/o Manohar Khorgade and Ors.

-Vs.-

Smt. Sushila Keshavrao Bhoyar and Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. Nitin A. Jachak, Advocate for applicants.
Mr. M.B. Naidu, Advocate for respondent No.1.

CORAM : MANISH PITALE J.

DATE : 13.07.2022.

By this revision application, the applicants i.e. the original defendant Nos.3 to 10 have challenged order dated 29.11.2019, passed by the Court of 9th Joint Civil Judge Senior Division, Nagpur, whereby an application at Exh.82, filed by the applicants herein, for rejection of plaint, has been rejected.

2. The respondent No.1, is the original plaintiff, who has filed a suit for partition, separate possession, damages and permanent injunction against the applicants and respondent Nos.2 and 3. The plaintiff has prayed for a decree of partition of the suit field and for putting her in possession of 1/5th share of the suit field, further seeking a money decree towards specific amount and an injunction to permanently restrain the defendants from

transferring, alienating or creating any charge over the suit fields. In the said suit, the applicants filed the aforesaid application for rejection of plaint, claiming that in the backdrop of statements made in the plaint itself and the documents filed therewith, no cause of action was made out and that the suit was barred by limitation.

3. In support of their claim that the respondent No.1 had failed to disclose any cause of action, the applicants sought to rely upon the contents of the plaint to claim that the respondent No.1 was all long aware about registered partition deed already executed as far back as on 15.05.1973, particularly in the light of entries in the revenue records placed along with the plaint itself. It was submitted that when partition had already taken place, of which the respondent No.1 was aware and this could be made out from the contents of the plaint read with the documents placed on record, the plaint ought to have been rejected on both grounds i.e. failure to disclose cause of action and the suit being barred by limitation.

4. The Court below, by the impugned order rejected the contentions raised on behalf of the applicants by referring to the contents of the plaint, the stand taken by the respondent No.1 and holding that in the facts and circumstances of the present case, the question of limitation would be a mixed question of law and facts. It was noted that an issue pertaining to

limitation was already framed in the said suit along with other issues.

5. Mr. Jachak, learned counsel appearing for the applicants submitted that the contents of the plaint and the documents filed there with clearly indicated that at various stages, pursuant to the said registered partition deed dated 30.05.1973, the respondent No.1 was admittedly allotted shares in the property and that this was evident from copies of the mutation entries placed on record by the respondent No.1 herself. It was submitted that in such a situation, it could not be said that ancestral property was available for partition and that therefore, the first prayer made in the plaint could not be adjudicated upon. Insofar as limitation was concerned, it was submitted that the very fact that shares were duly allotted and mutation entries were made in favour of respondent No.1 from time to time indicated that she was well aware about the partition of the property and she never raised any grievance till the year 2017. Merely by claiming that there was a meeting to assuage her grievance and that legal notice was issued thereafter, would not mean that cause of action accrued in the year 2017. On this basis, it was submitted that the impugned order deserved to be set aside.

6. On the other hand, Mr. Naidu, learned counsel for respondent No.1, invited attention of this

Court to the contents of the plaint. It was submitted that the contention raised on behalf of the applicants that in the absence of challenge to the registered partition Deed dated 30.05.1973, the suit ought not to be entertained, was misplaced for the reason that according to the respondent No.1, the document was void and that no declaration in that regard, was necessary. It was further submitted that the cause of action was specifically pleaded in paragraph 12 and in the paragraphs before the same, the chronology of events was stated on behalf of the respondent No.1 to explain the manner in which her grievance arose and how the cause of action could be said to have arisen in the year 2017. It is submitted that when the issue of limitation is already framed along with other issues, the plaint cannot be rejected at this stage.

7. This Court has heard the learned counsel for rival parties and perused the material on record. Insofar as non-disclosure of cause of action is concerned, this Court has perused the plaint in detail along with the documents filed therewith. The narration of events in the plaint read with the documents filed on behalf of the respondent No.1 does indicate the nature of grievance sought to be raised on behalf of respondent No.1. The case of the said respondent No.1 is that she was never made aware of the partition deed dated 30.05.1973 and that therefore, it was not binding on her. There is no averment in the plaint conceding to the validity or

existence of the said registered partition deed dated 30.05.1973. The other facts pleaded in the plaint bring out the grievance sought to be projected on behalf of the respondent No.1, which culminated, according to her, in a meeting that took place between family members in the year 2016. It is then pleaded that pursuant thereto on 18.06.2016 two of the brothers of respondent No.1 executed registered relinquishment deed, but when the children of the other brothers refused to do so, cause of action arose for her and she caused a legal notice dated 13.02.2017 to be issued to the defendants. Thereafter, on 20.03.2017, the aforesaid suit came to be filed.

8. The nature of pleadings placed on record do indicate that cause of action regarding the grievance of the respondent No.1 was certainly made out and this cannot be said to be a fit case for rejection of plaint on the ground that no cause of action was made out.

9. Insofar as the limitation is concerned, the pleadings in the plaint, as noted above and the documents on record do indicate that at best the question of limitation would be a mixed question of law and facts. An issue in that regard having been already framed by the Court below along with other issues, it cannot be said that the applicants and other defendants would be put to any prejudice, if the matter is directed to be taken to the next stage of trial. In fact, this Court is of the opinion that

the Court below was justified in proceeding on the basis that no case was made out for rejection of the plaint at the outset.

10. Hence, it is found that there is no merit in the present civil revision application and accordingly, it is dismissed.

11. It is brought to the notice of this Court that respondent No.1 i.e. the original plaintiff is about 80 years old and that her evidence was already recorded on 22.11.2018 and thereafter, the proceeding has been languishing before the Court below.

12. In view of the above, it would be appropriate that the suit is disposed of expeditiously and in any case within a period of one year from today.

13. It is made clear that the Court below shall proceed on the merits of the matter without being influenced by the observations made in this order.

JUDGE