

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

CIVIL REVISION APPLICATION NO.18 OF 2022

1. Pralhad s/o Khandu Jadhav
Age : 55 years, Occu. : Agriculture,
R/o. Khasgaon, Taluka : Jafrabad,
District : Jalna.
2. Digambar s/o Khandu Jadhav
Age : 58 years, Occu. : Agriculture,
R/o. Khasgaon, Taluka : Jafrabad,
District Jalna. ...Applicants

Versus

1. Vaibhav s/o Jagannath Lokhande
Age : 26 years, Occu. : Agriculture,
R/o. Khasgaon, Taluka : Jafrabad,
District : Jalna.
2. The District Collector,
Jalna.
3. The Tehsildar, Jafrabad,
Taluka : Jafrabad, District : Jalna.
4. The Circle Officer, Khasgaon
Taluka : Jafrabad, District : Jalna.
5. The Talathi, Khasgaon
Taluka : Jafrabad, District : Jalna. ...Respondents

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Advocate for Petitioners : Mr. Joshi Amol R.
AGP for Respondent Nos.2 to 5 : Mr. A.B. Chate
Advocate for Respondent No.1 : Mr. Ranjit D. Gaikwad h/f
Mr. Shrikant D. Kawade

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CORAM : S.G. MEHARE, J.

DATED : SEPTEMBER 15, 2023

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. By the consent of the parties, heard finally.

2. The defendants nos. 1 and 2 have preferred this civil revision application, taking exception to the order of the learned 3rd Joint Civil Judge Senior Division, Jalna, below Exhibit-19 in R.C.S. No.143 of 2021 dated 10.12.2021, whereby the application under Order VII Rule 11 was rejected.

3. The present applicants had filed an application under Order VII Rule 11 (b), (c) and (d) of the Civil Procedure Code contending that the plaint averments itself reflect that the suit is barred by limitation. The present applicants had purchased 74 R land on 04.08.1995 from the father of the respondent/plaintiff and put it in possession. The plaintiffs have cleverly created the cause of action by pleading that he got the knowledge of the said sale deed on 20.01.2020. He did not dispute that the plaintiff was minor when the sale deed was executed in his favour. It was also not disputed that the date of birth of the plaintiff was 05.12.1994. So, the plaintiff became major on 05.12.2012. The suit ought to have been filed within three years after attaining the majority. It has also been submitted that earlier, the mother of the plaintiff had filed a suit regarding the same sale transaction against her husband and defendant No. 1. However, the plaintiffs have pleaded in this suit that defendant No.1 had left

the possession of 74 R land in favour of his mother during the said suit; hence did not appear in the said suit. Thereafter, she did not file any suit. The father of the plaintiff died on 12.05.2019. A false cause of action has been pleaded that arose on 02.03.2021. The suit was filed on 04.05.2021. Calculating the age of the applicant, as per his admitted date of birth, he did not file a suit within three years of attaining the majority. The plaint averments itself show that the suit is hopelessly barred by limitation. Secondly, the plaint was sought to be rejected on the ground that the suit was undervalued. The prayer has also been made to reject the plaint under clause (c).

4. Learned counsel for the applicants has vehemently argued that the cause of action is apparently false and concocted. The suit was not filed within three years of attaining his majority. The plaint was cleverly drafted, and the plaintiff is trying to show that he became a major in 2020. He would not get the benefit of Article 59 of the Limitation Act. He would argue that the impugned order is erroneous on its face. He read over Para 11 of the plaint and vehemently argued that the cause of action does not arise in 2021. He also argued that the mutation entry was taken in their names immediately after the sale deed in favour of the applicants. Until the death of the plaintiff's father, there were no complaints. However, after his death, the suit was filed on the false and concocted cause of action, which never arose. He would also argue that it is hard to

digest that the plaintiff did not know about the suit filed by his mother in 2011. To bolster his arguments, he would rely on the case of Hardesh Ores (P) Ltd Vs. Hede and Company, (2007) 5 SCC 614. In the said case, the Hon'ble Supreme Court has laid down the law rejecting the plaint under clause (d) of Order 7 Rule 11 the plaint shall be read as a whole. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct.

5. Further, the observations recorded in the case of T. Arivandandam Vs. T.V. Satyapal and Another, (1977) 4 SCC 467, which the applicants have relied upon, are that if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. Further, he relied on the case of N.V. Srinivasa Murthy and Others Vs. Mariyamma (Dead) by proposed Lrs. And Others, (2005) 5 SCC 548, that a suit merely for declaration that the plaintiffs are absolute owners of the suit lands could not have been claimed without seeking declaration that the registered sale deed was a loan transaction and

not a real sale. Herein the case, the declaration is sought that the sale deed executed in favour of the present applicant/defendant is not binding upon him. Further, he would rely on the case of Prem Singh and Ors Vs. Birbal and Ors, Supreme Court Reports (2006) Supp.1 S.C.R. 692, wherein it has been observed that Article 59 of the Limitation Act applies specially when a relief is claimed on the ground of fraud or mistake. It only encompasses within its fold fraudulent transactions, which are voidable transactions. If a deed was executed by the plaintiff when he was a minor and it was void, he had two options to file a suit to get the property purportedly conveyed thereunder. He could either file the suit within 12 years of the deed or within 3 years of attaining majority. Since the suit was not filed within that period, the suit was held barred by limitation.

6. Further, he relied upon the case of Dahiben Vs. Avrindbhau Kalyanji Bhanusali (Gajra) Dead Through Lrs. And Others, (2020) 7 SCC 366, wherein it has been observed that the plaint shall be rejected under Order VII Rule 11(d) when from averments in plaint suit appears to be barred by any law.

7. He would reiterate that the plaint averment itself *prima facie* shows that the suit is barred by limitation. Hence, the plaint was to be rejected.

7. Per contra, learned counsel for the respondent/plaintiff would submit that the cause of action has been elaborately pleaded in

the plaint. Though the sale deed, as alleged by the defendant/present applicant, was claimed to be executed by his father in 1995, he never possessed the said land. He would refer to Para 11 of the plaint that the defendants are the person from the revenue department. They were threatening them to prepare a panchnama under 7(b) of the Maharashtra Land Revenue (Preparation of Maintenance of Record) Rules, 1977 and trying to disturb their peaceful possession. The entire land measuring 6 H 4 R was in his possession. The defendants tried to encroach upon over 74 R land. They had encroached over 21 feet of the land in his possession. The defendants never claimed the possession of land purchased by them. On 02.03.2021, the defendants started illegal activities. The cause of action to file the suit was 02.03.2021. He would submit that the facts have been specifically averred in the plaint, explaining the cause of action in detail. Therefore, it cannot be said that the suit is barred by limitation. He would rely on the case of Chhotanben and Ors Vs. Kiritbhai Jalkrushnabhai Thakkar and Ors, AIR 2018 SC 2447, in which it has been observed by the Hon'ble Supreme Court that what is relevant for answering the matter in issue in the context of the application under Order VII Rule 11(d), is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the Defendants or the plea taken by them in the written statement or any application filed by them cannot be the basis to decide the application

under Order VII Rule 11(d). Only the averments in the plaint are germane. The view of the Trial Court that the suit had been filed within time after acquiring the knowledge about the execution of the registered sale deed; therefore, it was a triable issue and correctly declined the application under Order VII Rule 11.

8. Further, he would rely on the case of Salim D. Agboatwala and Ors vs Shamji Oddhavji Thakkar, AIR 2021 SC 5212 in which the observation of the Supreme Court in case of P.V. Guru Raj Reddy and Ors Vs. P. Neeradha Reddy and Ors, AIR 2015 SC 2485 were reproduced in the said case, it has been observed in paragraph 13 that rejection of the plaint under Order VII rule 11 of the Code of Civil Procedure is a drastic power conferred in the Court to terminate a civil action at the threshold. Therefore, the conditions precedent to the exercise of power are stringent, and it is especially so when rejection of plaint is sought on the ground of limitation. When a plaintiff claims that he gained knowledge of the essential facts giving rise to the cause of action only at a particular point of time. The same is accepted at the stage of considering the application Under Order VII Rule 11.

The Highest Court has consistently held that the claim of the plaintiffs about the knowledge of the essential facts giving rise to the cause of action as pleaded will have to be accepted as correct. At the stage of consideration of the application under Order VII rule 11, the

stand of the defendants in the written statement would be altogether irrelevant.

9. The case laws relied upon by both parties are clear that the averment in the plaint should be read as a whole, and from the pleadings, the Court has to consider or determine whether the suit is within the limitation or not. It has also been the observation of the Hon'ble Supreme Court that the pleadings as regards the knowledge of essential facts giving rise to the cause of action as pleaded will have to be accepted as correct. Learned counsel for the applicants/defendants did not deny that for determining the limitation of the suit, the averments of the plaint shall be read. However, he emphasized that the plaint averment itself shows that there was no cause of action.

10. The plaintiff has specifically pleaded in the plaint that though the sale deed was executed in favour of the present applicants/defendants, the land measuring 74 R was never handed over to him, and he never cultivated it. However, he got the knowledge the defendant had managed the mutation entry as the brother of the defendant was Talathi. In Para 11 of the plaint, the specific averments have been made as regards the knowledge. It is not in dispute that on the date of filing of the suit, the plaintiff was 26 years old. But reading the plaint as a whole, it appears that he has specifically pleaded about getting the knowledge of the sale deed in

question and the disturbance caused to his possession of the suit land. In such a fact situation, the question of limitation should be considered as a mixed question of facts and law, and that may be determined and decided on merit by leading the evidence.

11. After having gone through the averments of the plaint, this Court is satisfied that from the date of knowledge and cause of action, the suit is *prima facie* within limitation. The impugned order is free from illegalities and infirmities.

12. For the above reasons, the civil revision application is dismissed.

13. No orders as to costs.

14. Rule is discharged.

(S.G. MEHARE, J.)