



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

CIVIL REVISION APPLICATION NO. 18 OF 2023

1. Tukaram Hanumantrao Chavan,
Since deceased Through LR.s,
- 1.1 Geeta Vilasrao Sable,
Age 39 years, Occu. Household,
R/o Devmurti, Tal. & Dist. Jalna.
- 1.2 Shivkumar Vinayak Chavan,
Age 38 years, Occu. Agriculture,
R/o As above.
- 1.3 Parvatabai Vinayak Chavan,
Age 65 years, Occu. Agriculture,
R/o As above.
- 1.4 Santosh Karbhari Chavan,
Age 39 years, Occu. Agriculture,
R/o As above.
2. Kundlik Sakharam Chavan,
Age 70 years, Occu. Agriculture,
R/o As above.
3. Mrs. Prayagabai Kundlik Chavan,
Age 60 years, Occu. Agriculture,
R/o As above.

... Petitioners/Applicants

Versus

1. Shankar s/o Rameshwar Chavan,
Age 36 years, Occu. Agriculture and Labour Work,
R/o Devmurti, Tal. And District. Jalna.
2. Narayan Bhagwanrao Chavan,
Age 59 years,
R/o Devmurti, Tal. And District. Jalna.
Through his Power of Attorney Holder,
Krishna Narayan Chavan,
Age 24 years, Occu. Agriculture and Business,
R/o Devmurti, Tal. And District. Jalna.
3. Mirabai Vitthalrao Chavan,
Age 60 years, Occu. Agriculture,

R/o As above.

4. Rameshwar Asaram Chavan,
Age 62 years, Occu. Agriculture,
R/o As above.
5. Yaman Asaram Chavan,
Age 65 years, Occu. Agriculture,
R/o As above.
6. Vitthal Tukaram Chavan,
Age 66 years, Occu. Agriculture,
R/o Devmurti, Tal. And District. Jalna.
7. Rushikumar Rangnath Chavan,
Age 38 years, Occu. Agriculture,
R/o Devmurti, Tal. And District. Jalna.
8. Baliram Rangnath Chavan,
Age 35 years, Occu. Agriculture,
R/o As above.
9. Ankush Vinayak Chavan,
Age 35 years, Occu. Agriculture,
R/o As above.
10. Malmatabai Vinayak Chavan,
Age 40 years, Occu. Agriculture,
R/o As above.
11. Vijay Karbhari Chavan,
Age 43 years, Occu. Agriculture,
R/o As above.
12. Vimalbai Karbhari Chavan,
Age 62 years, Occu. Agriculture,
R/o As above.
13. Madhuri Deepak Chavan,
Age 31 years, Occu. Agriculture,
R/o Devmurti, Tal. And District. Jalna.
14. Vedika Deepak Chavan,
Age 10 years, Occu. Education,
R/o As above.
15. Abhimanyu Deepak Chavan,
Age 5 years, Occu. Education,

R/o As above.

Applicants No.14 and 15 through
their Natural Guardian i.e. Mother
Madhuri Deepak Chavan,
Age 30 years, Occu. Agriculture,
R/o As above.

... Respondents.

WITH

CIVIL REVISION APPLICATION NO. 24 OF 2023

1. Tukaram Hanumantrao Chavan,
Since deceased Through LR.s,
- 1.1 Vitthal Tukaram Chavan,
Age 66 years, Occu. Agriculture,
R/o Devmurti, Tal. And District. Jalna.
- 1.2 Rushikumar Rangnath Chavan,
Age 38 years, Occu. Agriculture,
R/o Devmurti, Tal. And District. Jalna.
- 1.3 Baliram Rangnath Chavan,
Age 35 years, Occu. Agriculture,
R/o As above.
- 1.4 Ankush Vinayak Chavan,
Age 35 years, Occu. Agriculture,
R/o As above.
- 1.5 Vijay Karbhari Chavan,
Age 43 years, Occu. Agriculture,
R/o As above.
- 1.6 Vimalbai Karbhari Chavan,
Age 62 years, Occu. Agriculture,
R/o As above.
- 1.7 Madhuri Deepak Chavan,
Age 31 years, Occu. Agriculture,
R/o Devmurti, Tal. And District. Jalna.
- 1.8 Vedika Deepak Chavan,
Age 10 years, Occu. Education,
R/o As above.

- 1.9 Abhimanyu Deepak Chavan,
Age 5 years, Occu. Education,
R/o As above.

Applicants No.1.8 and 1.9 through
their Natural Guardian i.e. Mother
Madhuri Deepak Chavan,
Age 25 years, Occu. Agriculture,
R/o As above.

2. Mirabai Vitthalrao Chavan,
Age 55 years, Occu. Agriculture,
R/o As above.

...Petitioners/Applicants.

Versus

1. Shankar s/o Rameshwar Chavan,
Age 36 years, Occu. Agriculture and Labour Work,
R/o Devmurti, Tal. And District. Jalna.
2. Narayan Bhagwanrao Chavan,
Age 59 years, Occu. Agriculture and Labour Work,
R/o Devmurti, Tal. And District. Jalna.
Through his Power of Attorney Holder,
Krishna Narayan Chavan,
Age 24 years, Occu. Agriculture and Business,
R/o Devmurti, Tal. And District. Jalna.
3. Rameshwar Asaram Chavan,
Age 67 years, Occu. Agriculture,
R/o As above.
4. Yaman Asaram Chavan,
Age 65 years, Occu. Agriculture,
R/o As above.
5. Kundlik Sakharam Chavan,
Age 72 years, Occu. Agriculture,
R/o As above.
6. Mrs. Prayagabai Kundlik Chavan,
Age 73 years, Occu. Agriculture,
R/o As above.
7. Geeta Vilasrao Sable,
Age 39 years, Occu. Household,
R/o As above.

8. Shivkumar Vinayak Chavan,
Age 38 years, Occu. Agriculture,
R/o As above.
9. Parvatabai Vinayak Chavan,
Age 65 years, Occu. Agriculture,
R/o As above.
10. Malmatabai Vinayak Chavan,
Age 55 years, Occu. Agriculture,
R/o As above.
11. Santosh Karbhari Chavan,
Age 39 years, Occu. Agriculture,
R/o As above.

... Respondents.

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Advocate for Petitioners & Respondent Nos.5 to 9 & 11 in

C.R.A./24/2023 : Mr. A.P. Bhandari

Advocate for Respondent Nos.1 & 2 : Mr. Sagar S. Ghate

Advocate for Respondent Nos.3, 6 to 9, 11 to 15 & Petitioners in

C.R.A./24/2023 : Mr. A.P. Nahar

Advocate for Respondent No.10 in C.R.A./24/2023 : Mr. R.N. Bhapkar

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CORAM : S.G. MEHARE, J.

DATED : DECEMBER 13, 2023

ORAL JUDGMENT :-

1. Heard learned counsel for the petitioners and learned counsel for the respondents.
2. The defendants Nos.1,2,1.3, 5 and 6 had two separate applications under Order VII Rule 11 (a) (b) (c) and (d) of the Civil Procedure Code (C.P.C. for short). Both applications were decided by a common order.
3. Respondents nos.1 Shankar and 2 Tukaram were the plaintiffs. They had filed a suit for declaration, possession, and injunction.

4. The declaration was sought that the sale deeds dated 24.05.1968 executed by Bhagwan, the father of Respondent No.3 in favour of deceased Tukaram and a sale deed dated 21.02.1972 executed by Rameshwar and Yaman in favour of Tukaram be declared not binding upon them and for the possession of the said lands gut nos.146 and 165. In sum and substance, the plaintiffs claimed that on 17.01.1968 there was a partition between Bhagwan, Rameshwar, and Yaman. They got 1/3rd share. However, the entries were not taken in the 7/12 extract. Taking advantage of this situation, the father of plaintiff no.3 sold some portion of land out of gut no.146 to defendant no.1 – Tukaram on 24.05.1968. Similarly, defendants nos.3 and 4 also sold gut numbers to Tukaram. The plaintiffs have the right to inherit and share in both suit lands. On 20.07.2022, the plaintiffs applied to the office of Tahsildar for copies of mutations. However, the record was torn, and they did not get the copies.

5. It has been alleged that while converting the survey numbers into gut numbers under the consolidation scheme, the false entries were taken on the basis of the forged documents. At the time of the partition, defendant nos.3 and 4 were minors. Their mother was their guardian. It has been alleged that since there were no entries in the revenue record, defendants, in collusion with each other, recorded their names in the revenue record without their knowledge. Hence, the sale transactions were not binding upon them. Both sale deeds were executed behind their back and without their consent. Due to the drought, the plaintiff and his family left the village for labour work. Their lands were remained

uncultivated. Again, it has been alleged that the defendants got the bogus entries recorded in the revenue record in their names, and on the basis of those entries, they have illegally encroached upon the suit lands. After returning to the village, the plaintiffs asked the defendants to remove their illegal possession, but they did not vacate. In para 9, the cause of action is shown as 10.07.2022, when the defendants refused to vacate the premises.

6. Learned counsel for the petitioners would submit that the plaint averments are ambiguous as regards the cause of action. When the sale deed was executed in 1968, plaintiff no.1 had not even been born. Perhaps he might not have conceived. The complete plaint does not disclose the cause of action, but the cause of action was concocted for bringing the suit within limitation. The defendants have purchased the suit land by registered document. Hence, applying the doctrine of notice as provided under Section 3 of the Transfer of Property Act, it is assumed that the plaintiffs had knowledge of the sale transactions. The suit was barred by limitation, and there was no cause of action. To bolster his arguments, he relied on the case laws. Those will be considered in the later part of the order. He also argued that Section 3 of the Limitation Act imposes the duty upon the Court to examine the limitation. For that purpose, pleading or objection of either party is not essential. He would also argue that the Court of First Instance did not consider these material aspects and erroneously rejected the application under Order VII Rule 11 of the Civil Procedure Code. He prayed to allow the revision applications.

7. Learned counsel for the plaintiffs submits that the suit would be governed under Article 56 of the Limitation Act. When the plaintiffs learned about the registration, the suit was filed within three years. The cause of action was specifically pleaded. Therefore, the suit was not barred by limitation. So far as the cause of action is concerned, the plaintiffs were the legal heirs of predecessors in title, giving them a right to share, as the property was ancestral. He would also argue that even if it is held that the suit is bad for limitation, the rights of defendants nos.3 and 4 have been protected. He also argued that various complex issues have been involved in the case about the accrual of the right to file a suit. The limitation is a mix question of law and facts. Therefore, the learned Court of first instance has correctly held that the plaint cannot be rejected at the earlier stage of the suit without the evidence on record. He would submit that the case laws relied upon by the petitioners are not applicable to the present case for the reason that those are on different facts. He prayed to dismiss the revision applications.

8. While discussing the facts pleaded by the plaintiffs, the Court has considered the pleadings. The applications under Order VII Rule 11 of the Civil Procedure Code are to be decided on the basis of the plaint averments only. It is a rule that the plaint shall be read as a whole to find out whether there was a cause of action to file a suit, as it is a bundle of facts. The accrual of the rights begins the period of limitation to run as provided under the Limitation Act, and it can not be created at the whims of the party to the suit. Article 56 of the Limitation Act speaks

of the limitation to declare the forgery of an instrument issued or registered. To declare the forgery of an instrument issued or registered was not binding or illegal, the said declarations are sought regarding the documents which were claimed to be forged. It was not a case of forgery. The plaintiffs have claimed the cause of action arose when they got the inheritance. Even if it is presumed that the plaintiffs were minors when the sale deeds were executed, the suit for declaration of right was to be filed within three years when the right to sue first accrued. A substance appears in the arguments of the learned counsel for the petitioners that when the sale transaction of 1968 was executed, plaintiff No.1 might not have been born.

9. The question is whether the plaint under Order VII Rule 11 could be saved on the sole ground that the limitation is a mix question of law and fact.

10. Learned counsel for the petitioners relied on the case of Rajendra Bajoria and Others Vs. Hemant Kumar Jalan and Others in Civil Appeal Nos.5819-5822 of 2021 (Arising out of S.L.P. (C) Nos.2779-2782 of 2019). In the said case, it has been observed that reading of the averments made in the plaint should not only be formal, But also be meaningful. It has been held that if clever drafting has created the illusion of a cause of action and a meaningful reading thereof would show that the pleadings are manifestly vexatious and meritless, in the sense of not disclosing a clear rights to sue, then the Court should exercise its power under

Order VII Rule 11 of C.P.C. It has also been held that such a suit must be nipped in the bud at the first hearing. These are the observations extracted from the case of T. Arivandandam v. T.V. Satyapal and Another, (1977) 4 SCC 467. It was observed in the said judgment that the powers conferred on the Court to terminate a civil action is a drastic one, and the conditions enumerated under Order VII Rule 11 of C.P.C. are required to be strictly adhered to. However, under Order VII Rule 11 of C.P.C., the duty is cast upon the Court to examine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint with the documents relied upon, or whether the suit is barred by any law. The underlying object of Order VII Rule 11 of C.P.C. is that when a plaint does not disclose a cause of action, the Court will not permit the plaintiff to protract the proceedings unnecessarily. In such a case, it will be necessary to put an end to the sham litigation so that further judicial time is not wasted.

11. He further relied on the case of Raghwendra Sharan Singh Vs. Ram Prasanna Singh of the Hon'ble Supreme Court in Civil Appeal No.2960 of 2019. In this case, it was observed that the averments in the plaint and the bundle of facts stated in the plaint should be considered to decide whether the suit is barred by law of limitation or for want of cause of action. In the case of Jayantilal Devji Shah Vs. Mangesh Dasrath Gaikar, 2018 (2) Mh.L.J. 709, the Bombay High Court held that it is well settled that whilst adjudicating upon an application under Order VII Rule 11 of the C.P.C. the plaint as a whole has to be meaningfully read and the Court would have to see through clever drafting which creates an illusion of a

cause of action. If the said test is applied the cause of action being pleaded on account of loss of possession is merely with a view to bring the suit within limitation. In the case of Nagichand s/o Devichand Buccha Vs. Vinod s/o Tarachand and ors, 2018 (1) Mh.L.J. 433 relied upon by the petitioners' counsel, it has been observed that the limitation for the said case would be ascertained, as per Article 54 of the Limitation Act, either from the date stipulated for the performance of the contract or where no such date is stipulated, from the time when the performance is refused. The parties have no suit for the specific performance of the contract. Hence, this case would not assist the petitioners. In the case of Gaurav s/o Balmukund and others Vs. Tukaram Pandurang Dhagekar (since dead) through his L.Rs., 2018 (4) Mh.L.J. 709, the Bombay High Court held that only the plaint is to be read and it has to be examined as to what is the cause of action sought to be agitated by the plaintiff and on that basis, it has to be ascertained as to when limitation period for agitating grievance in respect of such cause of action has been triggered. Once it is held that the suit filed by the plaintiff, on a plain reading of the plaint, is barred by limitation, the Court is bound to exercise power under Order 7 Rule 11(d) of the C.P.C. to reject the plaint.

12. The ratio laid down in the case of T. Arivandandam (cited supra) has been reiterated repeatedly in various cases. The rule has been set out that the application under Order VII Rule 11(d) of the C.P.C. should be dealt with only by reading the plaint as a whole. However, if the Court holds that the suit is barred by limitation or the plaint does not disclose

the cause of action, the Court shall exercise the powers under Order VII Rule 11 of the Civil Procedure Code.

13. As reproduced in the above paragraphs, the plaint averments reveal that defendant no.1 was 34 years old when the suit was filed. He has impugned the sale transaction of 1968. Considering these two dates, there appears to be substance in the arguments of the learned counsel for the petitioners that he might not have been born or even conceived. The other plaint averments, particularly para 7, disclose that the plaintiffs had knowledge about the so-called encroachment of the contesting defendants in whose favour the sale deed was executed. However, no specific date has been disclosed when they left the village due to drought to find employment at another place and when they returned home and, for the first time, learned about the so-called encroachment by the defendants. It is also not pleaded how many times and in which year they requested the defendants to vacate the suit land. All of a sudden, they came up with a case, and in July 2022, they applied for the documents with the Office of Tahsildar. Since they did not get the certified copies, they have come up with a case that the defendants got the mutations fraudulently. The last cause of action they have pleaded is 10.07.2022. On that date, again, the plaintiffs asked to vacate or remove the encroachment and hand over the possession to them.

14. Reading the plaint as a whole, it is clear that the plaintiffs themselves were not clear when the cause of action arose. They did not deny the documents i.e. the sale deeds, which were registered in favour

of the defendants. Therefore, they knew about the questioned sale deeds as provided under Section 3 of the Transfer of Property Act. Though the normal rule is that the limitation is a mix question of law and fact, the plaint averments are not specific about the cause of action and limitation. The sale deeds were executed by the predecessor in title of the plaintiffs. The plaintiffs are claiming the share by way of succession or inheritance. Therefore, the acts done by their predecessor in the title cannot be said to be forgery. The executant of the sale deed never made any such allegation against the contesting defendant no.1. The plaintiffs attained the majority long back. The limitation begins to run from attaining the majority and, at that time, the right to sue accrued for the first time. The suit was not brought within three years after attaining the majority. Reading the plaint, the Court is satisfied that there was no cause of action to bring the suit, which was apparently barred by limitation.

15. The learned Court of first instance erred in not allowing the application and preventing the unwanted suit. Hence, it is liable to be set aside. Therefore, the following order :

ORDER

- (i) Both revision applications are allowed.
- (ii) The plaint is rejected.
- (iii) The document, if any, filed by the plaintiffs be returned to them by obtaining the provisions of law.
- (iv) If the parties have the right to file the suit under any other law, these observations will not affect those rights.

(v) Needless to state, the parties' rights, if executable under any law, would not be affected by this order.

(S.G. MEHARE, J.)

Mujaheed//