

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

CIVIL REVISION APPLICATION NO.49 OF 2022

1. Himmat S/o Kalyan Meherwal,
Age : 50 Years, Occ. Business

2. Deepali W/o Himmat Meherwal,
Age : 47 Years, Occ. Business

Both Resident of 'Isha Villa',
Gulmohar Road, Savedi,
Tq. Savedi, Dist. Ahmednagar

3. Dinesh S/o Siaram Kulwal,
Age : 52 Years, Occ. Business,
R/o. Karachiwala Nagar,
Near Mahesh Talkies, Ahmednagar.

...Applicants
(Org. Def. Nos. 4 to 6)

VERSUS

1. Chandrakant s/o Haribhau Sawant,
Age : 61 Years, Occ. Social Worker,
R/o. Savedi, Tq. Savedi,
Dist. Ahmednagar.

.. (Org. Plaintiff)

2. Narayan s/o Tatyaba Thombre,
Deceased through legal heirs

(Org. Def. No.1)

2-A Takaram Narayan Thombre,
Age : 60 Years, Occ. Unknown,

2-B Baban Narayan Thombre alias Rohidas Narayan Thombre,
Age : 55 Years, Occ. Agriculture,
Both Resident of Shondi Tq and District Ahmednagar

2-C Surekha Bajirao Nimse,
Age : 50 Years Occ. Household,
R/o. Pokhardi,
Taluka and District Ahmednagar

3. Sow. Janabai w/o Narayan Thombre,
Deceased through legal heirs already
on record as respondent Nos.2A to 2C .. (Org. Deft. No.2)
 4. Radheshyam s/o Madhavlal Rajoriya,
Age : 67 Years, Occ. Business,
R/o. M.G. Kapda Bazar, Ahmednagar.
 5. Madhukar S/o Haribhau Sawant,
Age : 67 Years, Occ. Labour,
R/o. Bolhegaon, Renuka Nagar,
Ahmednagar.
 6. Arvind s/o Haribhau Sawant,
Age : 50 Years, Occ. Labour,
 7. Shobha Sudhakar Sawant,
Age : 57 Years, Occ. Household
 8. Mahesh Sudhakar Sawant,
Age : 28 Years, Occ. Private Service
- Respondent Nos. 7 to 9 are
R/o. Savedi, Tq. Savedi,
Dist. Ahmednagar
9. Shashikala Arun Dongre,
Age : 64 Years, Occ. Household,
R/o. Chhatrapati Colony No.6,
Bhistbag Chowk,
Ahmednagar.
 10. Nisha Vishnu Bhagat,
Age : 38 Years, Occ. Household,
R/o. Soham Tailor at post Nimblak,
Ahmednagar.

..Respondents
(Org. Def. Nos. 7 to 12)

..

Advocate for Applicants : Mr. A.S. Bajaj
Advocate for respondent No.1, 7 to 10 : Senior counsel Mr. Rajendrraa
Deshmukkha along with Advocate Ketan D Pote, Advocate Ashwini
Deshmukh instructed by Advocate Arvind G. Ambetkar

Advocate for respondents Nos.2-A & 2-C, 2-B : Mr. D.R. Markad
Advocates for respondent No.5 : Mr. G.P. Darandale and S. B. Mhaske
Advocate for respondent Nos.1, 7, 8, 9 and 10 : Mr. A.G. Ambetkar
Advocat for respondent No.4 : Mr. Swapnil S. Patil

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CORAM : S. G. MEHARE, J.

DATE : 26.09.2023

ORAL JUDGMENT :

1. Defendants Nos. 4 to 6 in the suit have impugned the order of the learned 6th Joint Civil Judge, Senior Division Ahmednagar, passed below Exh. 38, in Regular Civil Suit No. 334 of 2020, on 25th January 2022, rejecting the application filed under Order VII, Rule 11 (d) of the Code of Civil Procedure.

2. The application was filed mainly on two grounds: (a) that the plaint does not show the cause of action, and (b) the suit is prima facie barred by law of limitation.

3. The learned counsel for the petitioners read paragraph No. 3 of the plaint and submitted that respondent No.1/plaintiff and contesting respondents have averred that his grandmother purchased the suit property and she owned it. The father of respondent No.1/plaintiff was the sole heir to his grandmother. His grandmother died intestate. Hence, the suit land was devolved upon the father of respondent No.1/

plaintiff. Therefore, their pleadings in next paragraph No.4 that it was the Hindu joint family property is legally incorrect. He referred to Section 16 of the Hindu Succession Act and pointed out that in the succession of a Hindu female, the interest first devolves upon the son and daughter and the husband. Since the father of respondent No.1/plaintiff was the sole successor, he became the absolute owner of the suit land. Hence, neither the respondent No.1/plaintiff nor his brother have shares in the suit property. He had also referred to the alleged sale deeds dated 28.04.1983 and 18.12.1990, which were sought to be declared not binding upon respondent No. 1/plaintiff's share. He has vehemently argued that respondent No.1/plaintiff was the witness to both the sale deeds. Hence, he cannot claim that he had no knowledge of the execution of sale deeds. During his lifetime, the father of respondent No.1/plaintiff, who died on 13.01.2007, never filed any suit or claimed a right against the vendor. Respondent No.1/plaintiff has come up with a false story that the sale deeds in question were initially executed in the year 1983, then the first purchaser transferred it to the further purchaser in the year 1990, then the title was passed on 3rd person in the year 2007 and to the fourth person in the year 2008 and in the year 2020 to the present defendants. The plaintiff also has a false case in which he and his brother were cultivating the

suit land jointly. The plaintiff has wrongly pleaded that he learnt about the claim of the ownership of the defendant Nos. 4 to 6 in July 2020, and thereafter, he obtained the certified copies of the sale deeds in question in August. He would point out that the entries to the 7/12 extract were also mutated in the name of the purchaser. Not only the present plaintiff but also his brother Sudhakar was the witness to the sale deeds in question. He would refer to Article 59 of the Limitation Act for the purpose of limitation for a suit to cancel or set aside the instruments or decree or for the recession of the contract. He would submit that the plaintiff knew first about the execution of the sale deeds long back in the year 1983, and that was the cause of action and not August 2020.

4. As far as the finding recorded by the learned trial Court, he would submit that the learned Civil Judge has erred in law in holding that the question of limitation is a mixed question of facts and law in each case. The facts of each case are to be examined independently. The relief sought that the sale deeds were not binding upon the plaintiff to the extent of his share is a deliberate pleading to bring the suit within limitation instead of claiming the cancellation of those sale deeds. He would rely on the case of *Raghwendra Sharan Singh Versus Ram Prasanna Singh (Dead) by Legal Representative (2020) 16*

Supreme Court Cases 601. He prays to allow the revision and reject the plaint.

5. Per contra, the learned Senior counsel for the plaintiff would submit that this Court, on the last date, had asked the plaintiff whether his signature was on the sale deed of the year 1983; he has instructions that the plaintiff denied that the said document bears his signature. Therefore, whether the said sale deeds bear the signature of the plaintiff or not, for that purpose, the entire trial is essential.

6. He has also referred to the cause of action clause of the plaint. He also read the same paragraph which the learned counsel for the applicants had read earlier. In addition, he has argued that the cause of action pleaded in the plaint is correct. Till July 2020, the plaintiff was unaware that the right/interest was created in favour of the present applicants/defendant Nos. 4 and 5. The prayer clauses are also correct. The plaintiff claims that he has an undivided share in the suit land; therefore, he did not pray for the cancellation of the sale deeds. The objection of the appellant's counsel thus found no water.

7. He would assail the findings of the Hon'ble Supreme Court in the case of Raghwendra Sharan Singh, cited (supra) relied upon by the learned counsel for the applicant contending the ratio that the

limitation is a mixed question of facts and law, was consistently held till the case of *Shakti Bhog Food Industries Limited Versus Central Bank of India and Another 2020 AIR (SC) 2721* which was delivered after the judgment of Raghwendra Sharan Singh cited (supra). He has correctly pointed out from the observations of the Hon'ble Supreme Court in the case of *Bishwanath Banik and Another Vs. Sulanga Bose and Others 2020 DJLS (SC) 301* that while considering the issue of whether the suit can be said to be barred by limitation or not, the Court has to consider and read the averments in the plaint as a whole and while considering an application Under Order VII, Rule 11 (d) of the Code of Civil Procedure by reading only few lines and passages and ignoring the other relevant parts of the plaint is not permissible.

8. He has also referred to the application of the present applicants filed under Order VII, Rule 11 of the Code of Civil Procedure. He has read over the application and reply filed by respondent No.1/plaintiff. He has tried to convince the Court that if the plaint is read as a whole, it is difficult to say that it does not disclose the cause of action, and the suit is *prima facie* barred by limitation. He prayed to dismiss the application.

9. As far as the statement on instructions regarding the signature on the disputed sale deed in 1983 is concerned, it seems false,

concocted and made with an intention to mislead the Court and merely an afterthought for the reason that the present petitioner in his application Exh. 38 has specifically contended that the sale deed dated 28th April 1983 bears his signature as a witness. In reply to the application, neither the plaintiff denied these averments nor put any explanation, so it is clear that it is an afterthought statement to protect the suit. That apart, the sale deeds are part of the plaint. The law is well settled that the documents filed with the plaint are the pleadings; hence, those can be considered. There is even no whisper in the plaint that the signatures of the plaintiff were forged, false and concocted.

10. The learned trial court has correctly considered the law laid down by the various courts that the issue of limitation is a mixed question of law and facts. However, in the case of Raghwendra Sharan Singh cited (supra) based upon the facts of the case, the Hon'ble Supreme Court laid down the law referring to the case of *Church of Christ Charitable Trust and Educational Charitable Society Vs. Poniamman Educational Trust (2020) 8 SCC 706*, in paragraph 13 in which it has been observed :

"13. While scrutinizing the plaint averments, it is the bounden duty of the trial court to ascertain the materials for cause of action. The cause of action is a bundle of facts which, taken with the law applicable to them, gives the

plaintiff the right to relief against the defendant. Every fact which is necessary to prove to enable them to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue".

11. Similarly, in the case of *Sopan Sukhdeo Sable v Charity Commissioner* (2004)3 SCC 137 in paragraphs No. 11 and 12, it was observed thus;

"11. In *ITC Ltd Versus Debts Recovery Appellate Tribunal*, it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

12. The trial court must remember that if on a meaningful and not formal reading of the plaint, it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code."

12. In paragraph No. 12 above, it has been clarified that the plaint should be read meaningfully and not formally. If on meaningful and not formal reading of the plaint, it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue; the Court should exercise power under Order 7 Rule 11 of the Code.

13. Similarly the case of Madanuri Sri Rama Chandra Murthy was also referred to in paragraph No. 6.8 was referred to which reads thus

"7. The plaint can be rejected under Order 7 Rule 11 if the conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the applications are the averments of the plaint only. If, on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the Court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the

suit is barred by any law would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant, are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the Court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage".

14. The case of *T. Arivandandam Versus T.V. Satyapal (1977) 4 SCC 467* was also considered, and it has been observed that as the suit is barred by law of limitation, the plaint is required to be rejected in the exercise of powers under Order VII, Rule 11 of the Code of Civil Procedure.

15. The facts of the case of Raghwendra Sharan Singh were that the plaintiff had filed suit against the brother and others for the partition of joint family property. The plaintiff was also a party to the suit. After the death of the plaintiff's brother, the plaintiff alone had filed a suit against the appellant before the Supreme Court for a declaration that

the deed of gift dated 06.03.1981 executed in favour of the appellant is showy, and sham transaction and no title and possession with respect to the gifted property ever passed to the appellant before the Supreme Court who was the original defendant and hence the same is not binding on him.

16. On the above facts, the Hon'ble Supreme Court has recorded the finding that considering the averments in the plaint, if it is found that the suit is clearly barred by law of limitation, the same can be rejected in the exercise of powers under Order VII, Rule 11 (d) of the Code of Civil Procedure.

17. The Court disbelieved the statement made on instructions that the sale deed of the year 1983 did not bear the signature of the plaintiff/present contesting respondent No.1 for the reason mentioned therefor. On reading the plaint, it reflects that it was cleverly drafted to bring suit in limitation. If the plaintiff had pleaded on the knowledge of his signature on the sale deeds in question, the suit would have been barred by limitation. Hence, to avoid the law of limitation, the plaint as presented was prepared.

18. Reading the plaint as a whole and the documents relied upon by the plaintiff, the Court is of the opinion that it does not disclose a

cause of action, and the suit was prima facie barred by limitation.

Hence, the following order

ORDER

- (i) The revision is allowed.
- (ii) The impugned order of the learned 6th Joint Civil Judge, Senior Division, Ahmednagar, passed below Exhibit-38 in Regular Civil Suit No. 334 of 2020, dated 25st of January 2022, is quashed and set aside.
- (iii) The plaint of R.C.S.No.334 of 2020 stands rejected under Order VII, Rule 11 (a) and (d) of the Code of Civil Procedure.
- (iv) No order as to costs.
- (v) The learned senior counsel for respondents Nos.1, 7 to 10 states that he has instructions to seek a stay of this order as they wish to impugn this order before the Hon'ble Supreme Court. The learned counsel for the applicant has strongly opposed the application.
- (vi) This Court has considered the entire law and facts of the case and passed the impugned order. The order is based upon the law settled by the Supreme Court. However, to protect the interest of the parties, this order is stayed for four weeks from today. The learned counsel for defendants Nos. 4 to 6 states

that due to the pendency of the suit, there is a cloud over their title.

- (vii) On enquiry, it is stated that there were no injunctive orders against the present applicant/original defendant No. 4 to 6. In these circumstances, it is made clear that their title, at this juncture, is free from cloud.
- (viii) Rule made absolute in the above terms.

(S. G. MEHARE)
JUDGE

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