

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

CIVIL REVISION APPLICATION NO.140 OF 2021

Ujwala Sureshchandra Jaju,
Age : 52 years, Occ : Household,
R/o. : 2102, Karsethji Road,
Ramchandrakut, Ahmednagar,
Taluka and District Ahmednagar. .. **APPLICANT**
[Original Defendant No.8]

VERSUS

1. Shashikala @ Kalawati Shankarlalji Bihani
Since deceased through LRs
- 1-A) Jyoti Prafulkumar Zanwar,
Age: 63 Years, Occu. Household,
R/o. Wahadne Wasti, Tal. Shrirampur,
District Ahmednagar.
- 1-B) Sau. Sushma Shrikant Karwa
Age: 62 Years, Occu. Household,
R/o. : In front of Jain Mandir, Marwadi Galli,
Phaltan, Dist. Satara.
- 1-C) Sau. Vandana Tarachand Bajaj
Age: 59 Years, Occu. Household,
R/o : Karwe Road, Pune
- 1-D) Mr. Manoj Shankarlal Bihani
Age: 53 Years, Occu. Business,
R/o : Wambori, Tal. Rahuri,
Dist. Ahmednagar.
2. Saitsh Vithaldas Jaju
Age: 58 Years, occ : Business,
R/o. Tapkir Galli,
Taluka and District Ahmednagar

3. Rajendra Vithaldas Jaju
Age: 56 years, Occ : Business,
R/o. Tarabag Colony, At Post Kedgaon
(Nagar Pune Road)
Taluka and District Ahmednagar
4. Smt Chandrakala Ghanshyamdas Jaju
Age: 71 years, Occ : Household,
5. Sandip Ghanshyamdas Jaju
Age : 45 years, Occ : Business,

R.4 and 5 R/o.5656, Tapkari Galli,
Ahmednagar, Tq. and Dist. Ahmednagar.
6. Nandlal Ramnarayan Jaju
Age : 69 years, Occ : Business,
7. Dr.Ramesh Ramnarayan Jaju
Age : 67 years, Occ : Medical Practitioner
No.6 and 7 R/o. 2102, Karsethji Road,
Ramchandrakhut, Tq. & Dist. Ahmednagar.
8. Mangala Rameshwar Charkha
Age : 65 years, Occ : Household
R/o. Plot No.6, Bhagirath Bungalow,
Madhukunj Society, Pashan,
Taluka and District Pune.
9. Anilkumar Motilal Patwa
Age : 54 years, Occ : Business,
R/o. c/o. Arihant Hardware, Plot No.43,
Merchant Bank Road, Market Yard,
Taluka and District Ahmednagar.
10. Ramnarayan Damodar Mantri
Age : 75 years, Occ : Business,
R/o. 2355/2356, Dalmandai,
Near Old Merchant Bank,
Taluka and District Ahmednagar.

11. Mulchand Shantilal Daga
Age : 51 years, Occ : Business,
R/o. C/o. Shantilal Bansilal Data,
2355/2356, Dalmandai, Near Old Merchant Bank,
Taluka and District Ahmednagar.

12. Pramod Shankarlal Bihani,
Age : 63 years, Occ : Business,
R/o. 13, Umed Bungalow, Viraj Estate,
Opposite Tarakpur Bus Stand,
Ahmednagar.

.. RESPONDENTS

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Mr.Anand P. Bhandari, Advocate for the applicant.

Mr.Mehul V. Navandar, Advocate for the respondent Nos.1A to 1D.

Mr.A.R.Syed, Advocate for the respondent Nos.2 to 8 and 12

Mr.D.R.Bhadekar, Advocate for the respondent No.11.

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CORAM : ARUN R. PEDNEKER, J.

Reserved on : 06.06.2023.

Pronounced on : 13.06.2023

JUDGMENT :

1] By the present Civil Revision Application, the applicant is challenging the order dated 22.09.2021 passed by the 2nd Joint Civil Judge Senior Division, Ahmednagar below Exh.45 in Special Civil Suit No.58/2020, rejecting the application filed by the applicant under Order VII Rule 11 of Civil Procedure Code [for short 'CPC'].

Brief facts leading to filing the present Civil Revision Application can be summarized as under:

2] The respondent no. 1 – original plaintiff filed Special Civil Suit No. 58/2020 for partition of the joint family property, as also, prayed for following reliefs, which are translated by the Translator of this Court :

A) The so-called will deed dated 08/04/2010, executed in favour of the defendant by the deceased father of the plaintiff, namely Ramvilas should be declared illegal and not binding on share of the plaintiff in the suit property.

B) An order declaring and handing over of the possession of share of the plaintiff in the undivided suit property to the $\frac{1}{2}$ extent or as the Hon'ble Courts decides as per the law on superior-inferior basis, separately be given from the immovable properties as described in the Schedule A to G and the movable properties as per the list against the defendant.

C) A declaration be made in favour of the plaintiff that gift deed dated 25/04/2019 in Schedule C, made by defendant No. 8 in favor of defendant No.1 and 2 as illegal and not binding on the plaintiff.

D) It further be decided that the plaintiff has the right to purchase the undivided share of the defendants in the suit property as mentioned in the schedule to the plaint on priority basis as per the market price or at such price, as decided by the Court and appropriate orders may be passed in favour of the plaintiff regarding the selling of the said share to the plaintiff by determining the price of the defendant's share if the undivided share in the suit property is to be transferred to any third person or has been found to be transferred by the defendant before deciding the suit.

E) Order be passed that, the mesne profit be given to the plaintiff from the defendant till the partition of the suit property on superior inferior basis.

3] The applicant is the original defendant no. 8 in the said suit. The applicant – defendant no. 8 filed an

application for return of the plaint / rejection of the plaint under Order VII Rule 11 of CPC. It was the contention of the applicant – defendant no. 8 that the prayer for declaration that the will deed dated 08.04.2010 made by the father of the plaintiff is barred by limitation as will deed was notarized and that the father of the plaintiff had passed away on 17.01.2011 and that will deed had come into force from the date of death of the father of the plaintiff. It is further the contention of the applicant – defendant no. 8 that on the basis of the said will, various revenue entries were made and that son of the plaintiff would occasionally visit to the applicant – defendant no. 8 and that he was aware of the will deed in the year 2011 itself. It is further the case of the applicant that the documents filed along with plaint itself indicate that there is mutation entry made on 19.11.2011 and copy of the same is obtained on 1st December, 2011, as such, the plaintiff was aware about the will deed in the year 2011 and that the suit filed for declaration that will deed dated 08.04.2010 be declared void, is barred by limitation. The application filed by the

applicant – original defendant no. 8 was opposed by the plaintiff by filing written statement.

4] It is the contention of the respondent no.1 – original plaintiff that she was not aware about the mutation entries in the year 2011, so also, in the plaint at para 11 it is stated as under :

11] Cause of Action for the suit :

The cause for action arose for suit at first on 08/04/2010, when the defendant No. 01 to 08 executed the illegal will from deceased Ramvilas in their favour. Thereafter, when Ramvilas, father of the plaintiff died on 17/01/2011, as per the will the name various defendants are taken in the P.R. Card in the suit property without informing the plaintiff. Thereafter, Sureshchandra died on 22/02/2018 and defendant No. 8 gave certain area out of the property in Schedule 'C' to defendant No.1 & 2 by executing gift deed on 25/04/2019. When the plaintiff came to know all the above facts during the Diwali festival in 2019, and when the plaintiff demanded for the partition of suit property and shares in the suit property and

subsequently the notice was issued on 13/12/2019, the defendant No. 8 replied that notice rejecting the share of plaintiff and continued to be arise since then within the jurisdiction of this Hon'ble Court.

5] Thus, the leaned counsel for the respondent no. 1 – original plaintiff submits that they came to know about the will in the year 2019, and accordingly, the Civil Suit was filed in the year 2020, which is within limitation and as such suit is not barred.

6] On hearing rival contentions, the Civil Court, by order dated 22.09.2021, held in para no. 6 as under :

6. It is well settled that, for deciding the application under Order VII Rule 11 of Code of Civil Procedure, it is necessary to look into the averments of the plaint as well as the document filed in support of those contentions. The plaintiff comes with a case that the suit properties were joint family properties of her father. Her father never adopted husband of defendant No.8. However, the defendants got executed will on 08/04/2010 and thereby

trying to grab the suit properties. Therefore, she claimed declaration regarding cancellation of will along with other relief. Her further contention show that, she came to know about the alleged will on the festival of Diwali 2019. She relied on Property card of suit property No. 2201 which shows that, the copy of the said property card was received on 01/12/2011. However, it does not show who applied for obtaining said document. From the contention of plaintiff, it is also seen that, her son i.e. defendant no. 12 helped the defendants but from the averment of the plaint itself, it is seen that, plaintiff is resident of Vambori, Tal. Rahuri Dist. Ahmednagar while her son defendant No. 12 is resident of ahmednagar. Therefore, at this earlier stage, only on the basis of averment in the plaint, it cannot be said that, the plaintiff came to know about the alleged will soon after its execution.

7] It is not possible for the trial Court on the basis of the averments in the plaint, so also, on the basis of the documents filed along with plaint that inference can be drawn that the plaintiff – respondent no.1 was aware about

the will deed in the year 2011. Thus, the Court held that the application filed under Order VII Rule 11 of CPC is dismissed and has framed the issue of limitation being mixed question of facts and law. The trial Court, thereafter, proceeded to frame the issues in the matter and has framed the issue in respect of limitation as one of the issues in the suit.

8] It is the contention of the applicant – defendant no. 8 that the documents relied on in the plaint clearly demonstrates that the suit is barred by limitation. The learned counsel for the applicant further submits that it is the duty of the Court on examining the evidence as available from the plaint and the documents relied upon by the parties to examine if there is cause of action or that the suit is within limitation and on perusal of the same, the Court reaches to a conclusion that the suit is barred by limitation and then the Court has passed order under Order VII Rule 11 of the CPC. The learned counsel further submits that the Court below has erred in holding that it cannot be

said that the suit is barred by limitation from the documents produced along with plaint. The learned counsel for the applicant relied upon the judgments in the cases of **Rajendra Bajoria and others Vs. Hemant Kumar Jalan and others** in Civil Appeal No.5819-5822 of 2021, decided on September 21, 2021, **Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by LRs** in Civil Appeal No.2960 of 2019, decided on March 13, 2019, **Shri Jayantilal Devji Shah Vs. Mangesh Dasrath Gaikar** reported in 2018 STPL 8245 Bombay, **Naginchand Devichand Buccha Vs. Vinod Tarachand and others** reported in 2018 (1) Mh.L.J.433 and **Gaurav Balmukund and others Vs. Tukaram Pandurang Dhagekar & others** reported in 2018 (4) Mh.L.J. 709.

9] *Per contra*, the learned counsel for the respondents submits that the suit is filed for partition. It is the contention of the plaintiff that will deed is executed just few months before the death of Ramvilas. The alleged will deed is apparently executed just few months prior to demise of Rambilas and that the plaintiff is entirely divested of her

share. The will deed is fabricated and bogus one. The father of the plaintiff is only one of the coparner of the joint family property. The plaintiff further contends that she came to know about the will deed in the year 2019 and the said fact is clearly specified in the plaint, so also, the documents which are annexed along with plaint does not show that the certified copy of the document is obtained by the plaintiff, showing mutation entries in favour of the applicant – original defendant no.8. The learned counsel for the respondent no.1 submits that the suit is within limitation and in any event the trial court has formulated the issue of limitation. The plaintiff was not aware of the alleged will deed and the same will be adjudicated by the trial Court after leading the evidence by the parties.

10] Having considered the rival submissions of the parties. The law on the subject as regards the jurisdiction under Order VII Rule 11 of the CPC has been summarized in the case of **Rajendra Bajoria and others Vs. Hemant Kumar Jalan and others** in Civil Appeal No.5819-5822 of 2021,

decided on September 21, 2021 and the Hon'ble Supreme Court has held in para 20 of the said judgment as under :

20. It could thus be seen that this Court has held that the power conferred on the court to terminate a civil action is a drastic one, and the conditions enumerated under Order VII Rule 11 of CPC are required to be strictly adhered to. However, under Order VII Rule 11 of CPC, the duty is cast upon the court to determine whether the plaint discloses a cause of action, by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law. This Court has held that the underlying object of Order VII Rule 11 of CPC is that when a plaint does not disclose a cause of action, the court would not permit the plaintiff to unnecessarily protract the proceedings. It has been held that 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] In the case of **Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by LRs** in Civil Appeal No.2960 of 2019, decided on March 13, 2019 and the Hon'ble Supreme Court has held in para 6.2 to 6.8 as under :

6.2 While considering the scope and ambit of the application under Order 7 Rule 11 of the CPC, few decisions of this Court on Order 7 Rule 11 of the CPC are required to be referred to and considered.

6.3 In the case of **T. Arivandandam** (supra), while considering the very same provision i.e. Order 7 Rule 11 of the CPC and the decree of the trial Court in considering such application, this Court in para 5 has observed and held as under:

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, 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 10, CPC. An activist Judge is the answer to irresponsible law suits.....”

6.4 In the case of **Church of Christ Charitable Trust and Educational Charitable Society** (supra), this Court in paras 13 has observed and held as under:

“13. While scrutinizing the complaint 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 for the Plaintiff to prove to enable him 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."

6.5 In **A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies, Salem** (supra), this Court explained the meaning of "cause of action" as follows:

"12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the

cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.”

6.6 In the case of **Sopan Sukhdeo Sable** (supra) in paras 11 and 12, this Court has observed as under:

“11. In *I.T.C. Ltd. v. Debts Recovery Appellate Tribunal* [(1998) 2 SCC 70] 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. (See *T. Arivandandam v. T.V.Satyapal* (supra).”

6.7 In the case of **Madanuri Sri Rama Chandra Murthy** (supra), this Court has observed and held as under:

“7. The plaint can be rejected under Order

7 Rule 11 if 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 application 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.”

6.8 In the case of **Ram Singh** (supra), this Court has observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation.

12] On perusal of the law laid down in the above mentioned cases, it is the duty cast upon the Court to scrutinize the plaint and accompanying documents and ascertain whether the plaint discloses a cause of action and that the plaint is within limitation and not unnecessarily protract the proceedings. The Hon’ble Supreme Court also held that the power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in order 7 Rule 11 are required to be strictly adhered to. The Hon’ble Supreme court has held that the purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial

time of the Court.

13] Now coming to the issue at hand that the plaint is for partition of the properties, so also, there is prayer for declaration of the alleged will deed dated 08.04.2010 is fabricated one and not executed by the father of the plaintiff. It is clear case of the plaintiff that the will deed has come to their knowledge in the year 2019. Unlike a case in the case of **Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by Lrs** [supra] where the document was admittedly within the knowledge of the parties. In the instant case, the case set up is that knowledge of the document was in the year 2019 and the suit is filed in the year 2020. The trial Court has held that the document which is annexed to the plaint, which shows that the mutation entries were made in the year 2011 and the copy of it were obtained in the year 2012. There is no mention of copy being obtained by the plaintiff of the said documents and thus inference cannot be drawn at this stage that the plaintiff was aware of the will deed in the year 2011. The

Trial Court has thus proceeded to frame the issues and framed the one of the issues in respect of limitation in the suit.

14] Considering the rival contentions, the trial Court has rightly scrutinized the plaint, so also, the documents in view of the law laid down by the Supreme Court and this Court that the documents and the plaint has to be scrutinized so as to ascertain whether the suit is filed within limitation. The trial Court has done that exercise, however, it has reached the findings that no inference can be drawn that the plaintiff was aware of the will deed in the year 2011 without leading any evidence on the issue. I do not see any error committed by the Trial Court. No inference of knowledge of will in the year 2011 can be drawn on examination of the plaint and the documents i.e. the property card wherein the mutation entries are made in the year 2011. The documents filed along with plaint indicate that copy of mutation entry was obtained in December, 2011, however, the document does not indicate

that the same has been obtained by the plaintiff. The mutation entry is made on 19.11.2011 and the document is obtained on 01.12.2011. It cannot be said that this document is obtained by the plaintiff. In the ordinary course, it is a person, who has applied for mutation entry, would have applied for the documents immediately after entry is being made and it cannot be inferred at this stage without further evidence that the plaintiff has applied for the document and that the plaintiff was having the knowledge of the document in the year 2011. The trial Court has thus rightly appreciated the law and scrutinized the plaint and the documents along with plaint and rejected the application filed under Order 7 Rule 11 of the CPC.

15] In view of the same, the Civil Revision Application is dismissed.

[ARUN R. PEDNEKER]
JUDGE

DDC