

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 23 OF 2018

1. SHRI RAIA RUDRAJI SINAI SALELICAR alias RAYA RUDRAJI SALELKAR, married, son of Rudraji Sinai Salelicar alias Rudraji Raya Salelikar, aged about 79 years, landlord and his wife
2. SMT. SUDHA RAIA SALELKAR alias SUDHA RAYA SALELKAR, married, aged about 74 years, housewife, both Indian Nationals and r/o H. No. 18, Shree Mangurish Krupa, Bamonsai, Sanguem, Goa 403 704.
3. SHRI ANANDA RUDRAJI SINAI SALELICAR alias ANAND RUDRAJI SALELKAR, married, aged about 74 years, businessman, son of Shri Rudraji Raya Salelkar alias Rudraji Raia Sinai Salelicar, Indian National, r/o F-1, Sarthak Building, Aquem-Alto, Margao, Salcete, Goa 403 601.
4. SMT. JYOTI alias PADMA ANAND SALELKAR, married, aged about 63 years, Housewife, r/o F-1, Sarthak Building, Aquem-Alto, Margao, Salcete, Goa 403 601.
5. SHRI SANTOSH RUDRAJI SINAI SALELKAR alias SANTOSH SALELKAR, married, aged about 66

years, son of Rudraji Sinai Salelkar alias Rudraji Salelkar, businessman, Indian National, r/o H. No. 64, Sukh Niwas, Khutiwada, Sanguem, Goa 403 704 and his wife

6. SMT. SHOBHA SANTOSH SALELKAR, wife of Santosh Rudraji Sinai Salelkar, married, aged about 63 years, retired Government Servant, Indian National, r/o H. No. 64, Sukh Niwas, Khutiwada, Sanguem, Goa 403 704.
- 6(a) SHRI SWAPNESH SANTOSH SALELKAR, Indian National, divorcee, aged 40 years, residing at Flat S3, Building A, Vision Park, Behind Raikar Hospital, Tonca, Miramar, Goa.
- 6(b) SMT. SONALI ROHAN SHENVI HODARKAR, Indian National, married, aged 42 years, daughter of Santosh Salelkar and;
- 6(c) SHRI ROHAN UTTAM SHENVI HODARKAR, Indian National, married, aged 43 years;
Both residing at Building-4, Flat F1-F2, Duple Residency, Tamdi Mati, St.Inez, Taleigao, Goa.
7. SMT. NILIMA SALELKAR alias NILIMA BALAJI SALELKAR, aged about 59 years, widow of late Shri Balaji alias Ajit Salelkar, retired Bank employee, Indian National, r/o H. No. 14, Bamonsai, Sanguem, Goa 403 704.
8. SMT. HEMA alias HEMLATA S. PHALGAONKAR alias HEMA SATISH

PHALGAONKAR, married, aged about 51 years, Indian National, daughter of late Mahableshwar Sinai Salelkar, housewife, r/o H. No. 144, Nagarcem, Canacona, Goa 403 702.

9. SHRI SATISH PHALGAONKAR alias SATISH GOVIND PHALGAONKAR, aged about 57 years, businessman, married, Indian National, r/o H. No. 144, Nagarcem, Canacona, Goa 403 702.
10. SHRI SUDESH M. SALELKAR alias SUDESH MAHABLESHWAR SINAI SALELKAR, married, aged about 47 years, son of late Mahabaleshwar Sinai Salelkar, businessman, Indian National, r/o H. No. 14, Bamonsai, Sanguem, Goa 403 704.
11. SMT. SONAL SALELKAR alias SONAL SUDESH SALELKAR, aged about 39 years, housewife, Indian National, r/o H. No. 14, Bamonsai, Sanguem, Goa 403 704.
- 11(a) MISS VAIBHAVI MADHUSUDAN PRABHUDESSAI, aged about 26 years, Indian National, working, resident of Cansaulim, Marmugao.
12. SMT. SUPRADA J. BORKAR alias SUPRIDA JITENDRA BORKAR, married, daughter of late Balaji alias Ajit Salelkar, aged about 33 years, housewife, Indian National, r/o H. No. 432/3, Ghanemorod, Xeldem, Quepem, Goa.
- 12(a) ROHAN RAJENDRA NAYAK, aged 25 years, Indian National,

unemployed, resident of Betalbhati,
Salcete, Goa.

13. SHRI JITENDRA BORKAR alias
JITENDRA GANESH BORKAR,
married, aged about 39 years, Indian
National, businessman, r/o H. No.
432/3, Ghanemorod, Xeldem,
Quepem, Goa.
14. SMT. TANIYA S. LOTLIKAR alias
TANIYA SACHIN LOTLIKAR,
married, daughter of late Shri Balaji
alias Ajit Salelkar, aged about 30 years,
housewife, Indian National, r/o B-11,
Pushpkunj, Damodar Nagar,
Chandrawado, Margao, Goa.
15. SHRI SACHIN LOTLIKAR alias
SACHIN P. LOTLIKAR, married,
aged about 37 years, Civil Engineer,
Indian National, r/o B-11, Pushpkunj,
Damodar Nagar, Chandrawado,
Margao, Goa.
16. SHRI SAKHARAM VASUDEV SINAI
USGAONKAR alias SAKHARAM
VASSUDEV USGAONKAR, (since
deceased), widower, aged about 90
years, son of Vasudev Sinai Usgaonkar,
Indian National, retired Government
Servant, r/at S-3, Mandovi Nagar, Dr.
Dada Vaidya Road, Panaji, Goa 403
001.
- 16(a) MR. SANJAY SINAI USGAONKAR,
son of late Sakharam Sinai Usgaonkar,
major in age and his wife
- 16(b) MRS. BINDU SANJAY SINAI
USGAONKAR, major in age, both
r/at S-3, Mandovi Apartments, Above

Goenchin Restaurant, Near
Mahalaxmi Temple, Dr. Dada Vaidya
Road, Panaji, Goa 403 001.

... Applicants

Versus

1. SMT. LAXMIBAI KASTURCHAND NADKARNI (since deceased), wife of late Kasturchand Nadkarni, major in age, married, housewife, Indian National, r/o Khutiwado, Sanguem, Goa.
2. SHRI PRAKASH alias MUKUND KASTURCHAND NADKARNI, son of late Kasturchand Nadkarni, major of age, married, Indian National, r/o Khutiwado, Sanguem, Goa and his wife [since Deceased, Represented by Legal heirs 2(a), 2(b) and 2(c)]
 - 2(a) Ms. Aishwarya Gautam Rege, 32 years of age, Indian National, Resident of Flat No. 1, 1st Floor, Sharrif Building, Bansai, Curchorem, Goa.
 - 2(b) Mr. Gautam Rege, 38 years of age, Indian National, Resident of Flat No. 1, 1st Floor, Sharrif Building, Bansai, Curchorem, Goa.
 - 2(c) Mr. Mayur Prakash Nadkarni, 29 years of age, Indian National, Resident of Flat No. 1, 1st Floor, Sharrif Building, Bansai, Curchorem, Goa.
3. SMT. GANDHALI PRAKASH NADKARNI, wife of Shri Prakash Kasturchand Nadkarni, major in age, married, housewife, Indian National,

r/o Khutiwado, Sanguem, Goa.

4. SHRI PRADEEP KASTUCHAND NADKARNI, son of late Kasturchand Nadkarni, major of age, married, Indian National, r/o Khutiwado, Sanguem, Goa and his wife
5. SMT. PREMILA PRADEEP NADKARNI, wife of Shri Pradeep Kasturchand Nadkarni, major of age, married, Indian National, r/o Khutiwado, Sanguem, Goa.
6. SHRI PRASHANT KASTURCHAND NADKARNI, son of late Kasturchand Nadkarni, major of age, married, Indian National, r/o Sanguekar Building, Sanguem, Goa and his wife
7. SMT. INDIRABAI PRASHANT NADKARNI, wife of Shri Prashant Kasturchand Nadkarni, major of age, married, Indian National, r/o Sanguekar Building, Sanguem, Goa.
8. SMT. MAYA SUBHASH LAWANDE, (since deceased survived by Respondent No. 9) d/o late Kasturchand Nadkarni, wife of late Shri Subhash Lawande, major of age, married, Indian National, r/o Anandwada, Candolim, Bardez, Goa.
9. GURUDATTA SUBHASH LAWANDE, s/o late Shri Subhash Lawande, Bachelor, r/o Anandwada, Candolim, Taluka Bardez, Goa.

10. SMT. CHAYA MADHUSUDAN PRABHU DESSAI, d/o late Kasturchand Nadkarni, wife of Shri Madhusudan Prabhu Dessai, major in age, married, Indian National, r/o Cansaulim in Mormugao Taluka and her husband
11. SHRI MADHUSUDAN PRABHU DESSAI, major in age, married, Indian National, r/o Cansaulim in Mormugao Taluka
12. SMT. ASHA ALIAS SANGEETA RAJEDRA NAYAK, r/o Bank of India Quarters, Ground Floor, Gogol Housing Board, Margao, Goa and her husband
13. SHRI RAJENDRA NAYAK, major in age, married, Indian National, r/o Bank of India Quarters, Ground Floor, Gogol Housing Board, Margao, Goa.
14. SMT. NISHA VILAS KARANGATE, d/o late Kasturchand Nadkarni, wife of Shri Vilas Kharangate, major in age, married, Indian National, r/o Velcao, Cansaulim in Mormugao Taluka and her husband
15. SHRI VILAS KHARANGATE, major in age, married, Indian National, r/o Velcao, Cansaulim in Mormugao Taluka
16. SMT. DAYA VIKAS PRABHU DESSAI, d/o late Kasturchand Nadkarni, wife of Shri Vikas Prabhu Dessai, major in age, married, Indian National, r/o Parshem, Taluka Pednem, Goa and her husband

17. SHRI VIKAS PRABHU DESSAI, major in age, married, Indian National, r/o Parshem, Taluka Pednem, Goa
18. SMT. SUNDARABAI GANGADHAR NADKARNI, (since deceased survived by Respondent Nos. 19 to 24) wife of late Shri Gangadhar Mukund Sinai Nadkarni, major in age, married, landlady, Indian National, r/o 'Shantae', Near Om Creations, Behind Golden Fork Restaurant with Bar, Borda, Margao, Goa.
19. SMT. SHANTA MADHUMILIND KULKARNI, d/o late Shri Gangadhar Mukund Sinai Nadkarni, major in age, married, Indian National, r/o Behind Bikers Stop (Antoneta Co-Operative Housing Society Ltd.), Borda, Margao, Goa and her husband
20. MADHU MILIND NARAYAN KULKARNI, major in age, married, Indian National, r/o Behind Bikers Stop (Antoneta Co-Operative Housing Society Ltd.), Borda, Margao, Goa.
21. SMT. LATA KIRAN KULKARNI, d/of late Shri Gangadhar Mukund Sinai Nadkarni, major in age, married, Indian National, r/o 'Shantae', Near Om Creations, Behind Golden Fork Restaurant with Bar, Borda, Margao, Goa and her husband
22. KIRAN NARAYAN KULKARNI, major in age, married, Indian National, r/o 'Shantae', Near Om Creations,

Behind Golden Fork Restaurant with Bar, Borda, Margao, Goa.

23. SMT. NITA alias NEHA PRAMOD NAIK, d/o late Shri Gangadhar Mukund Sinai Nadkarni, major in age, married, Indian National, r/o Kurtarkar Gardens, Housing Board, Gogol, Margao, Goa and her husband
24. PRAMOD VISHWANATH NAIK, major in age, married, Indian National, r/o Kurtarkar Gardens, Housing Board, Gogol, Margao, Goa.
25. Shri ABHIJAT MANOHAR PRABHU PARRIKAR alias ABHIJAT PRABHU PARRIKAR, aged about 25 years, married, businessman, Indian National, son of Shri Manohar Gopalkrishna Prabhu Parrikar, r/at UG-1, Urban Retreat, Behind Model Status, Caranzalem, Goa 403 002 and his wife
26. SMT. SAYEE ABHIJAT PRABHU PARRIKAR, wife of Shri Abhijat Manohar Prabhu Parrikar, major in age, married, housewife, Indian National, r/at UG-1, Urban Retreat, Behind Model Status, Caranzalem, Goa 403 002.
27. SHRI KRISHNARAJ NARCINVA NAIK SUKERKAR alias KRISHNARAJ NARCINVA SUKERKAR, married, aged about 54 years, son of Shri Narcinva Naik Sukerkar, Indian National, businessman, r/at TF-1, Sukerkar Mansion, M.G. Road, Panaji, Goa and his wife

28. SMT. SANGITA KRISHNARAJ
NAIK SUKERKAR, wife of Shri
Krishnaraj Narrcinv Sukerkar, major in
age, married, Indian National, r/at TF-
1, Sukerkar Mansion, M.G. Road,
Panaji, Goa. ...Respondents

Mr. D. Lawande with Mr. Jay Mathew and Mr. Chirag Angle, Advocates for the Applicants.

Mr. Hanumant D. Naik with Mr. Aditya D. Naik, Advocates for Respondent Nos. 2 to 24.

Mr. Devidas J. Pangam with Mr. Ajay Borkar with Mr. Parikshit Sawant, Advocates for Respondent Nos. 25 and 26.

CORAM: B.P. DESHPANDE, J.
RESERVED ON: 27th JULY 2023
PRONOUNCED ON: 3rd AUGUST 2023

JUDGMENT:

1. Heard learned Counsel Mr. Lawande, who appears along with Mr. Jay Mathew and Mr. Chirag Angle for the Applicants, Mr. H.D. Naik appearing along with Mr. Aditya D. Naik for Respondent Nos. 2 to 24 and Mr. Pangam who appears along with Mr. Ajay Borkar and Mr. Parikshit Sawant for Respondent Nos. 25 and 26.

2. This matter is taken up for final disposal at the stage of admission itself with the consent of all the parties.

3. The Applicants who are the original Defendants in Special Civil Suit No. 10 of 2014 pending on the file of Senior Civil Judge at Quepem, preferred the present Revision thereby challenging the impugned order dated 26.04.2018, by which, the learned Trial Court rejected both the Applications [at Exhibits-21 and 27] filed under Order VII Rule 11 of CPC for rejection of the plaint.

4. The original Defendant Nos. 1 to 16 filed an Application at Exhibit-21 under Order VII Rule 11 of CPC on two-fold grounds i.e. the plaint does not disclose the cause of action qua the Plaintiffs and that the suit is barred by law of limitation. The second Application at Exhibit-27 was filed by Defendant Nos. 17 to 20. The Plaintiffs filed a reply to both the Applications opposing it.

5. By the impugned order, the learned Trial Court rejected both the Applications. Defendant Nos. 1 to 16 who filed the Application at Exhibit-21 challenged the impugned order whereas the other Defendants [Defendant Nos. 17 to 20] who appear in the present matter [Respondent Nos. 25 and 26] supported the contentions of the Applicants.

6. Learned Counsel Mr. Lawande appearing for the Applicants strongly contended that the learned Trial Court failed to consider and read the plaint in a meaningful manner and came to the wrong conclusion. He submitted that the Plaintiffs by clever drafting created an illusory cause of action in their favour which in fact is not at all available to the Plaintiffs. In this respect Mr. Lawande would submit that the suit property which was the subject matter of the inventory proceedings vide item no. 9 was entirely allotted to Smt. Sumatibai alias Krishnabai, through whom Defendant Nos. 1 to 16 are claiming rights. This inventory proceedings concluded and was acted upon and there was no challenge raised by any interested parties over such allotment. He submitted that the property originally belonged to Mukund Sinai Nadkarni who had half share in the property bearing no. 3918 and that such entire half of the property no. 3918 belonging to Mukund Sinai Nadkarni was the subject matter of the inventory proceedings under item no. 9, which was exclusively allotted to Smt. Sumatibai, through whom Defendant nos. 1 to 16 claimed inheritance. Mr. Lawande would submit that by clever drafting, the Plaintiffs tried to confuse by claiming that half of the property of Mukund Sinai Nadkarni was put in the inventory proceedings whereas the remaining half devolved upon the Plaintiffs, which is absolutely incorrect to the knowledge of the Plaintiffs and which

could be established from the documents relied upon by the Plaintiffs in the plaint.

7. Mr. Lawande would then submit that the learned Trial Court observed in paragraphs 9 and 12 about some admitted facts. However, there are no such admitted facts even shown in the plaint or in the written statement. He further submitted that while deciding an Application under Order VII Rule 11 of CPC, the Court has to only look into the plaint and the documents relied upon by the Plaintiffs. Thus, according to Mr. Lawande, such findings are perverse. He then claimed that there is some reference in paragraph 19 of the plaint regarding the relinquishment of the property by Smt. Sumatibai. However, the Plaintiffs have clearly avoided to mention that such relinquishment was only in respect of the share of the mother of Smt. Sumatibai, which devolved upon her after the first inventory was finalized. It is submitted that there is no relinquishment of shares by Smt. Sumatibai which she got/inherited through her father, Mukund Sinai Nadkarni. He then submitted that since the Plaintiffs are not the owners or co-owners, by clever drafting the Plaintiffs created an illusory cause of action and therefore, the plaint needs to be rejected.

8. Mr. Lawande would then submit that by filing such a suit, the Plaintiffs are trying to open the inventory proceedings, which were decided way back by crystallizing the shares in favour of the allottees. Thus, the suit for declaration of co-ownership is barred by law of limitation.

9. Mr. Lawande placed reliance in the case of **Dahiben Vs. Arvindbhai Kalyanji Bhanusali, (2020) 7 SCC 366** and more particularly, paragraph 23 of the said decision. He also placed reliance in the case of **Dilip Vasant Shetye Vs. Angela P. Oliveira** [Civil Revision Application No. 2 of 2016 decided by this Court on 14.09.2022]. Mr. Lawande would submit that the facts in the case of **Dilip Vasant Shetye** (supra) are similar to the facts of the present matter and therefore, the Revision needs to be allowed.

10. Learned Counsel Mr. D. Pangam appearing for Respondent Nos. 25 and 26 supported the arguments of the learned Counsel for the Applicants.

11. Mr. H.D. Naik appearing for Respondent Nos. 2 to 24/original Plaintiffs submitted that the impugned order needs no interference as the plaint discloses the cause of action and is

supported by documents. He would submit that the question as to whether the Plaintiffs devolved any right in the property of Mukund Sinai Nadkarni would be decided on the basis of evidence. He would submit that this is not the stage to interpret the documents relied upon by the Plaintiffs and to reject the plaint at the threshold without giving any opportunity to the Plaintiffs. He then submitted that the registered documents along with the inventory proceedings will have to be proved in evidence so as to decide the claim of co-ownership of the Plaintiffs and unless such aspect is produced through the witness, this Court should not interfere with the findings of the learned Trial Court.

12. Rival contentions fall for the consideration as under:

13. Respondent Nos. 2 to 24 filed a Special Civil Suit claiming co-ownership and other reliefs against the Defendants, wherein it is specifically pleaded that there is a property known as “Gotona Soroda” which bears description no. 3918 and surveyed under survey nos. 78/1 and 79/1 of village Neturlim, Sanguem, Goa. This property originally belonged to Mukund Nadkarni as found in description no. 3918. Upon the death of Mukund Nadkarni, Inventory Proceedings No. 8482 of 1933 was initiated and the same was completed on 21.12.1933. In the said Inventory

Proceedings No. 8482 of 1933, vide item no. 9, the suit property was enlisted as the property of deceased Mukund. According to the Plaintiffs and more particularly, in paragraph 4, the suit property is described as “Gotona Sorodo” bearing description no. 3918 and surveyed under survey no. 78/1 and 79/1 of village Neturlim along with its boundaries. In paragraph 8 of the plaint, it is averred that the suit property originally belonged to late Mucunda Bicu Sina Narcornim which is evident from the registration of transmission bearing no. 2885. Said Mucunda was married to Smt. Indirabai. Out of wedlock, said Mucunda and Indirabai had three sons, namely, Raghavdas, Kasturchand [husband of Plaintiff No. 1] and Gangadhar [husband of Plaintiff No. 18] and two daughters, namely, Sumatibai alias Krishnabai married to Rudraji Sinai Salelkar [mother of Defendant Nos. 1 and others] and Shantabai alias Kusumavati married to Ganoba Sinai Sanvordekar [both deceased].

14. The plaint further shows that Kasturchand Mukund Nadkarni expired, survived by Plaintiff No. 1 as his widow and moiety holder, three sons and six daughters i.e. Plaintiff Nos. 2, 4, 6, 8, 10, 12, 14 and 16 and Defendant No. 4 respectively. Gangadhar Mukund Sinai Nadkarni expired leaving behind

Plaintiff No. 18 as his widow and moiety holder and Plaintiff Nos. 19 to 25 as his heirs.

15. The plaint paragraph 12 admits that Smt. Sumatibai, married to Rudraji Salelkar expired leaving behind Defendant Nos. 1 to 16 as her heirs. Mukund Sinai Nadkarni married Smt. Indirabai under the provisions of communion of assets and therefore, after the marriage Smt. Indirabai got half right in the suit property.

16. Paragraph 14 of the plaint is very much relevant and thus quoted below for ready reference:

“Said Shri Mukund Bicu Sinai Narcornim expired on 19th March 1933 without will or gift deed leaving behind his death as moiety holder his widow and children referred above. Upon the death of said Mucund Bicu Sinai Narcornim an inventory proceeding bearing no. 8482 of 1933 was filed. In the said inventory proceedings the 50% (half rights) of Mucund Bicu Sinai Narcorim to the suit property was listed as item no. 9 in the list of assets and the said item no. 9 was allotted to Sumatibai alias Subatibay who was married to Rudraji Sinai Salelkar. Upon her marriage, her name was changed to Krishnabai alias Krisnabai Ridraji Salelkar alias Crisnabai Sinai Salelkar.”

17. The plaint paragraph 19 refers to a deed of relinquishment and succession dated 04.04.1968, by which, daughters of late Indirabai and Mukund Sinai Nadkarni, namely, late Sumati alias Krishnabai Rudraji Salelkar along with her husband and late Shantabai alias Kusumavati Ganoba Sanvordekar along with her husband, have relinquished their inheritance in whole, in favour of remaining heirs and thus, the Plaintiffs and Defendant Nos. 3 and 4 are the exclusive owners of the suit property.

18. The plaint paragraph 20 further shows that the record of rights of the suit property shows the name of Krishnabai Rudraji Salelkar in the occupant's column. However, the suit property is jointly owned by the Plaintiffs and Defendant Nos. 3 and 4 and that the Plaintiffs and Defendant Nos. 3 and 4 were in actual possession and enjoyment of it. It is further contended that the suit property comprises partly paddy fields, cashew plantations and timber trees. Plaintiff No. 1 has been appropriating the cashew yield on his behalf and on behalf of other co-owners without any objection or obstruction from any other person. The Plaintiffs were not aware of the entries in the survey records and that same were brought to their notice somewhere in the month of May 2013. It is further claimed in paragraph 23 that such survey records came to their knowledge when the workers engaged by

Defendant Nos. 17 and 18 prevented Plaintiffs from entering the suit property and claimed that the property belongs to Defendant Nos. 17 and 18. Only thereafter the Plaintiffs made inquiries about the survey records which revealed that the name of Plaintiffs and other co-owners were not recorded and that the name of Smt. Krishnabai Rudraji Salelkar alone stands recorded in the occupant's column. However, it is the contentions of the Plaintiffs that inspite of such survey entries, the Plaintiffs and the other co-owners are in possession and enjoyment of the suit property.

19. In paragraph 27, it is averred by the Plaintiffs that the workers of Defendant Nos. 17 and 18 obstructed the Plaintiffs. They started making inquiries upon which they noticed that taking advantage of the name of Krishnabai Rudraji Salelkar recorded in the occupant's column, Defendant Nos. 1 to 16 sold the suit property to Defendant Nos. 17 and 18 by two separate sale deeds. It is the contention of the Plaintiffs that Defendant Nos. 1 to 16 sold the property to Defendant Nos. 17 and 18 illegally and without any right. It is then claimed in paragraph 30 that though an area of 1,014 square metres out of survey no. 79/1 was used by the Government for the purpose of the construction of the road, they were not aware of any acquisition proceedings as Raghavdas and Plaintiff No. 15 were looking after the day to day affairs and did

not object to the construction of the road by the Government as it was in the public interest.

20. Apart from challenging both the sale deeds dated 15.05.2013, the Plaintiffs claimed that they were the co-owners of the suit property.

21. A meaningful reading of the plaint would show that the Plaintiffs have relied upon certain documents in the plaint including the description no. 3918. There is a reference with regard to the relinquishment deed, however, no details of such relinquishment deed are specifically pleaded. It is a well settled proposition of law that only the pleadings in the plaint and the documents relied upon by the Plaintiffs are required to be looked into for the purpose of deciding the Application under Order VII Rule 11 of CPC. Thus, Mr. Lawande was right in pointing out that though the Plaintiffs cursorily referred to the relinquishment deed executed by Smt. Sumatibai, the same was not produced along with the plaint with only the intention of suppressing the material facts and creating confusion by clever drafting. He would submit that once the document is relied upon in the plaint, the same could be looked at, even if the Plaintiffs failed to produce it. I am in agreement with such a submission as the duty of the Court is to

read the plaint in a meaningful manner together with the documents referred therein so as to find out whether the right to sue or whether cause of action qua the Plaintiffs exists. If such a document is suppressed and a reference to the same is made in the plaint only with the intention to create confusion, then the Court is certainly empowered to look into such a document. Relinquishment deed though not produced by the Plaintiffs, the relevant extract is found in the additional written statement filed by Defendant Nos. 1 to 16 in paragraph 18 which reads thus:

8. The translated extract of the said Deed of Renouncement and Succession, upon which Plaintiffs have placed reliance, itself reads as under:

“that she Sumoti with consent and assistance from her said husband and the said Shantabai gratuitously cede the whole block of inheritance in favour of others in precise terms of disposition of the article two thousand twenty nine of the ‘codigo civil Portuguese’ (portugues civil code) which is in force, the undivided rights that they have in the inheritance of their deceased mother and mother in law Indirabai Mucunda Narcornim, widow of the said Mucunda Bicu Sinai Narcornim...

That as consequence of the cession done afore of the undivided rights, the said Custurchanda, Gangadora, and Ragovadas, are sole and universal heirs of deceased Indirabai, there being no other person or persons who along with the latter three could contest or claim to the inheritance of the said Indirabai.”

22. Admittedly, the plaint clearly goes to show that upon the death of Mukund Nadkarni, Inventory Proceedings No. 8482 of 1933 were filed. The inventory proceedings are relied upon by the Plaintiffs and the documents produced along with its translation clearly go to show that such inventory proceedings started/initiated upon the death of Mukund in the year 1933 itself and at that time, his wife Indirabai was alive and she was considered as moiety holder. Children of Mukund and Indirabai found a reference on page 3 of the inventory proceeding stating that Sumatibai married Rudraji Salelkar, Shantabai wife of Ganoba Sinai Sanvordekar, Kasturchand, Gangadhar and Raghavdas. The description of the property starts from page no. 5 showing in all 22 items which included even a debt of ₹3,000/-. Item no. 9 describes the suit property thus:

“Right to half of the paddy field “Gotonosordo” or “Gotonsordo”; bounded on whole of East and West, with the property of Gurguro Gauncar; North-top of hill; and South with watercourse and property “Durigo” of the Comunidade; situated in Jaquinundem; described in the Land Registration Office under number three thousand nine hundred eighteen. Evaluated by forty rupees.”

23. The right to half of the paddy field “Gotona Sorodo” or “Goton Sordo” included 3918 land registration number. The

allotment/list of division starts from page 11 wherein half share was allotted to the moiety holder/Indirabai and the remaining half was distributed amongst five children in equal shares. The share of moiety holder/Indirabai is separately shown, wherein no portion of item no. 9 was allotted to her. The said item no. 9 was allotted to Sumatibai along with other items and the total share allowed to Sumatibai is $\frac{1}{5}^{\text{th}}$ of the share of the brothers and sisters, apart from the share of the moiety holder. This inventory was finalized on 21.12.1933, which is clear from page 14 of the typed copy of the inventory proceedings.

24. The relinquishment deed referred by the Plaintiffs was only upon the death of Indirabai and when the property of Indirabai devolved upon her heirs i.e. half share allowed to her as moiety holder in the inventory of 1933. The remaining half was already apportioned in favour of five children. Thus, reference in the plaint with regard to the relinquishment deed executed by Sumatibai in the year 1965 is admitted upon the death of Indirabai and in connection with shares that devolved upon Sumatibai on account of the death of her mother Indirabai.

25. Thus, it clearly goes to show that the Plaintiffs by making reference to the relinquishment deed executed by Sumatibai in the

year 1965 are trying to show that by such relinquishment, Sumatibai relinquished her rights from item no. 9 to her brothers and sisters which is clearly not so and based on the documentary evidence relied upon by the Plaintiffs. The question of relinquishment of the right of Sumatibai in item no. 9 would not arise upon the death of her mother Indirabai. The contention of Mr. Lawande is therefore right that such relinquishment was only with regard to the share of Sumatibai which she devolved upon the death of her mother Indirabai and not in connection with the share which Sumatibai received upon the death of Mukund in inventory proceedings of 1933. It makes clear that by just referring to the relinquishment deed and by suppressing other relevant facts, the Plaintiffs are trying to create confusion. It also amounts to clever drafting of the plaint so as to create illusory rights to suit which must be nipped in the bud, if found so.

26. The second contention of Mr. Lawande is that the Plaintiffs are trying to show that only half of the property of deceased Mukund was put in Inventory Proceedings No. 8482 of 1933 which is not so. He invited my attention to description no. 2885, which the Plaintiffs have referred to in plaint at paragraph 8 as registration of transmission. These documents show that on 28.10.1899, Mukund Nadkarni along with his wife Indirabai is

shown as the owner of certain property including half of the property under no. 3918. The description of the property under no. 3918 shows a paddy field described as “Gotona Sorodo” or “Goton Sordo” situated in village Jacqui-Nundem, Sangem and under inscription no. 1243. It is recorded that on 22.08.1890, inscription no. 1243 shows the name of Vinayak Govind Parab Desai. Paragraph 2 of the inscription shows that this title is inscribed in favour of the presenter, half of the property no. 3918 described at folio 62 of book no. 13, which half, he purchased with Raghunata Anant Sinai Nadkarni by name Ramkrishna Anant Sinai Nadkarni and his wife Rukmani Sinai, proprietors and inhabitants of Curpem for ₹50/- along with its old and modern uses. Thus, it shows that the property bearing description no. 3918 was partly owned by Vinayak Govind Parab Desai and half was registered in the name of Raghunata Sinai Nadkarni and his wife Rukmini Sinai. This half was then inscribed in the name of Mukund Sinai Nadkarni vide inscription no. 2885. Thus, Mukund Sinai Nadkarni was the owner of only half of land registration no. 3918. This entire half belonging to Mukund was the subject matter of inventory of the year 1933 vide item no. 9 as described above.

27. Mr. Lawande was therefore right in pointing out that plaint paragraph 14 is clearly a clever drafting by illusory showing that only half share of deceased Mukund was the subject matter of the inventory and the remaining half was not put in the said inventory. In fact, the documents relied upon by the Plaintiffs themselves show that such pleadings are considered to be the documents. The entire half of the property “Goton Sordo” belonging to Mukund Sinai Nadkarni was the subject matter of the inventory of the year 1933 as shown in item no. 9. Admittedly this item no. 9 was not allotted to any other person except Sumatibai which is clear from paragraph 12 of the inventory proceedings [typed copy]. There is absolutely no reference to allotment of item no. 9 either to the moiety holder i.e. Indirabai, wife of Mukund or to other children. Therefore, in the year 1933, half of the property under description no. 3918 was allotted to Sumatibai. This inventory was never challenged by any other co-owner. It is admitted by the Plaintiffs that the suit property is the said half share of the deceased Mukund. Thus, when the said entire half of Mukund vide item no. 9 was allotted to Sumatibai, the Plaintiffs were not having any right over the said suit property. The question of claiming co-ownership on the basis of clever drafting of the plaint therefore needs to be nipped in the bud for the simple reason that the so called cause of action shown in the plaint qua

the Plaintiffs was created by only clever drafting of the plaint. In this regard, reference could be placed in the observations in the case of **Dilip Vasant Shetye** (supra) wherein the facts are quite similar in nature.

28. In the case of **T. Arvindandam Vs. T.V. Satyapal & Another, (1977) 4 SCC 467**, the Hon'ble Apex Court observed in paragraph 5 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 unrepentantly 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 plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 C.P.C. 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 X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot

down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr.XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi: It is dangerous to be too good."

29. In view of the decision in the case of **Jahangir @ Jawahar & Others Vs. Smt. Maureen de Sequeira, (2017) 6 Mah. L.J. 270** and keeping in mind the settled position of law laid down by the Hon'ble Apex Court, this Court in **Dilip Vasant Shetye** (supra) has observed in paragraph 26 as under:

26. The word "right to sue" ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is, the right to prosecute, to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is filed. Thus, the right to sue is directly linked with the relief and such proceedings must be instituted within the period of limitation as provided in the Limitation Act. For seeking a declaration of any right, title or interest in the suit property, the period of three years is provided, which starts/began to run, when the right to sue first accrues. Therefore, the wording in Article 58 of the

Limitation Act as far as the period begins to run is when the right to sue "first accrues". Once the limitation starts, the same cannot be interrupted and the suit has to be instituted within the specified time.

30. In the case of **Dahiben** (supra), the Hon'ble Apex Court in paragraph 23 and after discussing the provisions of Order VII Rule 11 of CPC observed that the remedy under Order VII Rule 11 of CPC is an independent special remedy wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision. In paragraph 23.15, the Hon'ble Apex Court observed that the provisions of Order VII Rule 11 of CPC are mandatory in nature. It states that the plaint shall be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint. Paragraph 24 deals with the cause of action wherein the Hon'ble Apex Court observed that it means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material

facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.

31. A meaningful reading of the plaint along with documents relied therein, would clearly go to show that by clever drafting, the Plaintiffs are trying to claim co-ownership right in the suit property which is not available to the Plaintiffs since in the year 1933 itself, the suit property was allotted to Sumatibai. Such inventory was never challenged. Therefore, raising a claim now of co-ownership, and that too on the basis of clever drafting, requires this Court to nip in the bud such an attempt as it would be a waste of time and a futile exercise.

32. The impugned order therefore needs interference. The Revision therefore needs to be allowed. Hence, the following order:

O R D E R

- (a) The Revision stands allowed.
- (b) The impugned order is hereby quashed and set aside.
- (c) The Application filed by the Applicants for rejection of plaint in Special Civil Suit No. 10/2014

stands allowed, thereby rejecting the plaint for want of cause of action and being barred by limitation.

(d) The parties shall bear their own costs.

33. The Revision stands disposed of in the above terms.

B.P. DESHPANDE, J.

VAIGANKAR
ESHA SAINATH

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VAIGANKAR ESHA SAINATH
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