

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.63 OF 2022

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Vitthal Padoba Mokashi ... Applicant

V/s.

Kisan Anyaba Marathe & Ors. ... Respondents

WITH

CIVIL REVISION APPLICATION NO.193 OF 2022

Dinkar Anyaba Marathe ... Applicant

V/s.

Kisan Anyaba Marathe & Ors. ... Respondents

Mr. Rajesh S. Datar i/by Mr. Akshay J. Kandarkar for
the applicant.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 13, 2023

PC.:

1. The defendant Nos.1 and 13 filed an application under Order 7 Rule 11(d) of the Civil Procedure Code, 1908 raising objection that the plaintiff's suit is barred by limitation.

2. On perusal of the plaint, it appears that the plaintiff is seeking relief of partition along with other reliefs. Even if for the sake of arguments it is assumed that the relief of declaration of sale deed is barred by limitation, however, substantive relief of partition still remains to be considered. It is well settled that

limitation have suit for partition begins from the date of ouster of co-sharer. From the averments in the plaint, it cannot be said that the plaintiff admits ouster trial to twelve years of filing of suit. Therefore, even if it is assumed that prayer clause (d) of the suit is barred by the limitation still prayer clauses (d) and (e) is barred by limitation. It is well settled in view of judgment in the case of **Sopan Sukhdeo Sable & Ors. vs. Assistant Charity Commissioner & Ors.** reported in (2004) 3 SCC 137 that part of the plaint cannot be rejected. No interference in the impugned orders is called for. However, the question raised by the applicant is kept open to be decided by the Trial Court at the time of final disposal of the suit.

3. The civil revision applications are disposed of. No costs.

(AMIT BORKAR, J.)