

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 80 OF 2023

Meerabai Bhagwan Mahadik.

...Applicant.

Versus

Kisan Bhaguji @ Bhagoji Jadhav
and Others.

..Respondents.

*Mr. Chaitanya B. Nikte and Ms. Sneha Bhange, Esha Malik and Prajit S. Sahane
i/b Hitanshu Jain for the applicant.*

Mr. Nitin Gaware Patil for respondent No. 1.

Coram : Sharmila U. Deshmukh, J.

Date : July 28, 2023.

P. C. :

1. The revisional jurisdiction of this court under section 115 of the Code of Civil Procedure 1908 [for short "the CPC"] has been invoked by the applicant challenging the order dated 13th October 2022 passed by the trial court rejecting the application filed under order 7 rule 11 read with section 151 of the CPC. For the sake of convenience, parties are referred to by their status before the trial court.

2. The facts of the case are that Special civil suit no.1044 of 2022 was instituted against four Defendants seeking declaration (a) that the Plaintiff is the sole owner of the suit properties (b) that the

Defendant No.1 had relinquished her undivided 1/5th share in the ancestral properties in favour of Plaintiff, (c) that the registered sale-deed and power of attorney executed by the Defendant No 1 in favour of Defendant Nos.2 to 4 in respect of the suit property be cancelled, and, for perpetual injunction restraining the Defendants from obstructing the peaceful possession of the Plaintiff over the suit properties.

3. On 21st July 2022, an application was preferred invoking the provisions of order 7 rule 11 of the CPC seeking rejection of plaint. This application was opposed by the plaintiff by his reply dated 28th September 2022. The trial court vide the impugned order dated 13th October 2022 rejected the said application on the ground that the plaintiff having a registered relinquishment deed in his favour, the plaint cannot be rejected at the initial stage and, as such, the trial court declined to consider the provisions of section 17 of the Registration Act, 1908. The other ground on which the application was rejected was that as per paragraph 23 of plaint, the cause of action arose on 30th December 2020 and 23rd March 2021 and the question of limitation will be decided after the evidence has been led. The trial court on the basis of above findings rejected the application.

4. Heard Mr. Mr. Chaitanya B. Nikte, learned counsel for the applicant and Mr. Nitin Gaware Patil, learned counsel for respondent no.1.

5. Mr. Nikte, learned counsel appearing for the applicant has taken this court through the averments in the plaint and would urge that it is admitted that the defendant No.1 had 1/5th share in the suit properties and that on 14th July, 2005 notarised relinquishment deed was executed by defendant No.1 and others in favour of the Plaintiff. He would further contend that the other legal heirs had subsequently executed duly registered relinquishment deed in favour of the Plaintiff, however, Defendant No.1 had not executed registered relinquishment deed and that being so, taking into consideration the provisions of Section 17(1)(b) of the Registration Act, 1908 read with section 49 of the Registration Act, 1908, there was no relinquishment in favour of the Plaintiff. He would urge that the suit based on a notarised document was barred by the provisions of Registration Act, 1908. He would further contend that the impugned order factually errs inasmuch as it is held that there is a registered relinquishment deed in favour of the plaintiff and that the issue of limitation will be considered at the time of trial. He has tendered a compilation of documents and would point out the notarised relinquishment deed

dated 14th July, 2005 and the subsequent registered relinquishment deed executed on 8th November 2012 in which the name of Hirabai as well as defendant no.1 has been scored off. In support of his submissions, Mr. Nikate relies upon the decision of the Apex Court in ***Sneha Gupta v. Devi Sarup [2010(1) Mh.L.J. 293]*** and ***Dahiben v. Arvindhbai Kalyanji Bhanusali [(2020) 7 SCC 366]***.

6. *Per contra* Mr. Gaware Patil learned counsel appearing for the respondent submits that the case of plaintiff is that defendant no.1 has alienated half share of the suit property which is beyond her entitlement and further that the property being undivided, the Defendant No 1 could not have alienated specific portion of the suit property adjacent to the road and put the Defendant Nos 2 to 4 in possession. He would further submit that the suit is required to be read into 2 parts; the first part relating to the relinquishment of the shares of sisters in favour of the plaintiff and second part as regards the execution of sale deed beyond the entitlement of defendant no. 1. He would further submit that the prayers (d) and (e) as regards the cancellation of sale deed as well as the injunction as against defendant nos.1 to 4 can always be claimed irrespective of the provisions of Registration Act, 1908 and the document would be only for collateral purposes. He would further submit that the plaint

discloses a cause of action inasmuch as the share in excess of entitlement of defendant no.1 has been sold. As regards the unregistered document, he would contend that the provisions of section 33 of the Maharashtra Stamp Act provides for impounding of the documents and as such that course can be adopted and it is not necessary for the suit to be dismissed. He relies upon following decisions :

[a] Srihari Hanumandas Totala v. Hemant Vithal Kamat [(2021) 9 SCC 99];

[b] Chhotanben v. Kirtibhai Jalkrushnbhai Thakkar [(2018) 6 SCC 422]
and

[c] Gajara Vishnu Gosavi v. Prakash Nanasaheb Kamble [(2009) 10 SCC 654].

7. Considered the submissions advanced by the learned counsel and perused the papers and proceedings with the assistance of learned counsel appearing for the respective parties.

8. Before proceeding further it would be beneficial to refer to the provisions of order 7 rule 11 of the CPC which reads as under:

“Rejection of Plaint. – The plaint shall be rejected in the following cases: –

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do

so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9."

9. In the present case, Clause (a) and (d) of Order 7 Rule 11 has been invoked. Based on the unregistered relinquishment deed, rejection is sought by contending that in view of the provisions of Registration Act, 1908 the suit is barred and secondly the suit does not disclose a cause of action as there is no clear right to sue.

10. It is settled position that while considering an application under Order 7 Rule 11 of CPC, the averments in plaint are germane and the averments have to be read as a whole. This exposition of law has been laid down in **Madanuri Sri Rama Rama Chandra Murthy v. Sayed Jalal [2017 13 SCC 174]** where in paragraph 7 the apex court has laid down as under :

7. The plaint can be rejected under Order VII Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under

Order VII 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 VII Rule 11, CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order VII Rule 11 of 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 VII Rule 11 of 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.”

11. Let us now turn to the averments in the plaint to ascertain the case of the Plaintiff. The suit property 1A described in the plaint as 97-R land bearing Survey No.58 Hissa No.6A and 1B as land bearing CTS No. 300 admeasuring 15 square meters, CTS No.301 admeasuring

77 square meters, CTS No.302 admeasuring 30.5 square meters and CTS No.303 admeasuring 24 square meters and the house situated thereon being property No.P/1/08/00271000. The case of Plaintiff is that the suit properties are ancestral properties and after the death of his father-Bhagoji, the plaintiff and 4 sisters each had acquired 1/5th share in the suit properties. In paragraph 8 of plaint, it is pleaded that the sisters as well as the legal heirs of deceased sister, on their own volition executed a notarised relinquishment deed dated 14th July 2005 in favour of plaintiff. As the deed was notarised, the concerned revenue officer declined to take the notarised relinquishment deed on record on the ground of non registration. It is averred in paragraph 10 that it was decided that as the notarised relinquishment deed is not registered, new relinquishment deed will be executed which will be registered and accordingly Tarabai and legal heirs of deceased Bababai executed a registered relinquishment deed bearing no.10807/2012 corrected by deed bearing no.3775/2015. It is further averred that Defendant No.1 and Hirabai could not remain present at the time of registration of the relinquishment deed and on 10th November, 2014, Hirabai executed a registered relinquishment deed in favour of the Plaintiff.

12. In paragraph 12, it is averred that defendant no.1 by the

notarised relinquishment deed dated 14th July 2005 has relinquished her undivided 1/5th share in the property, which is subsisting till today and, as such, the entire suit property is under the ownership of plaintiff.

13. In paragraph 14, it is averred that a public notice came to be issued on 30th April 2022 regarding the half share in suit property 1A and at that time the plaintiff became aware that a registered sale deed has been executed in respect of the half share of suit property 1A in favour of defendant nos.2 to 4 and that the said sale deed is illegal.

14. In paragraph 20, it is averred that as defendant no.1 has previously relinquished her undivided 1/5th share in the suit property, the sale deed as well as the power of attorney executed by defendant no.1 did not have the authority to execute the sale deed and power of attorney in favour of defendant nos.2 to 4. In paragraph 21 it is pleaded that defendant no.1 in spite of being aware that her right in the suit property is extinguished and that other sisters had relinquished their rights in favour of the plaintiff, has illegally effected the sale deed in respect of half share of suit property and has transferred specific portion of roadside portion in favour of defendant nos. 2 to 4. The cause of action is stated to have arisen on

30th December 2020 and 23rd March 2021 upon the registered sale deed and power of attorney being executed by defendant no.1 in favour of defendant nos. 2 to 4 in respect of the half share of suit property 1A.

15. A meaningful reading of plaint, discloses that the Plaintiff has come with a case of sole ownership of the entire suit property based on the notarised relinquishment deed of the year 2005 and the subsequent registered relinquishment deeds of the year 2012 and 2014. The admitted position is that Defendant No.1 had undivided 1/5th share in the suit property and had not executed registered relinquishment deed in favour of the plaintiff. To my mind, upon reading of the plaint as a whole, the claim for sole ownership of the suit property *vis-a-vis* the share of Defendant No.1 is based on the notarised relinquishment deed. Pertinently the Plaintiff also seeks a declaration that Defendant No.1 has relinquished her 1/5th share in the property. Based on his claim of sole ownership, the execution of registered sale deed by Defendant No.1 in favour of Defendant Nos.2 to 4 is sought to be challenged. The substantive reliefs claimed are declaration of title and that Defendant No.1 did not have any right in the suit property based on the notarised relinquishment deed. The other reliefs are consequential to the declaration of title as without

declaration of sole ownership, the sale deed executed by defendant no.1 could not be challenged.

16. The entire case of Plaintiff is based on the notarised relinquishment deed which suffers from two defects i.e. unstamped and unregistered. As far as registration is concerned, Section 17(1)(b) and Section 49 of the Registration Act read as under:

“17. Documents of which registration is compulsory.—(1)

The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force,

namely:—

(a)

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;”

49. Effect of non-registration of documents required to be registered.— *No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—*

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any

collateral transaction not required to be effected by registered instrument."

17. The provisions of Section 17(1)(b) mandate the registration of non-testamentary instruments which purport or operate to create any right, title or interest of the value of one hundred rupees and upwards, to or in immovable property. Section 49 of the Registration Act, 1908 provides that no document required by Section 17 to be registered, shall affect any immovable property comprised therein or be received as evidence of any transaction affecting such property, the exception being unregistered document can be received as evidence of contract in suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument.

18. The reliance on Section 33 of the Maharashtra Stamp Act, as regards impounding of document, can cure the defect of deficiency of stamp duty. Insofar as the registration of document is concerned, the notarised relinquishment deed has not been put into service as evidence of any collateral transaction. Upon my reading of the plaint, the entire thrust is that the Plaintiff is the sole owner of suit property by virtue of notarised relinquishment deed and by which document

Defendant No.1 has been divested of her right in the property and as such could not have executed the sale deeds in favour of Defendant Nos.2 to 4. The relief claimed is not of partition of the suit property or that Defendant No.1, not being entitled to 1/2 share in the suit property, had sold in excess of her share, which is what the learned counsel for Respondent No.1 wants this Court to read by pointing out paragraph 21 of the plaint which avers that inspite of being aware of having no right title and interest in the suit property, Defendant No.1 has sold 1/2 share in the suit property. In my view, the stray mention of sale of 1/2 share of the suit property cannot be construed as the suit being one challenging the sale deed on ground of Defendant No.1 has alienated the property in excess of her share. The suit proceeds on the footing that by the notarised relinquishment deed Defendant No.1 had relinquished her undivided share in the suit property and as such seeks to challenge the alienation on that ground. The suit is a suit for title based on the unregistered notarised relinquishment deed. Learned counsel for the Respondent wants the plaint to be read into two parts. In that regard, the Apex Court in the case of ***Sopan Sukhdeo Sable & Ors Vs Assistant Charity Commissioner [(2004) 3 SCC 137]*** has held in paragraph 15 as under :

"There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it

would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction or words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities."

19. The rejection of plaint is sought on the ground that the suit is barred under the provisions of Registration Act, 1908 as the same is based on an unregistered relinquishment deed. In my opinion, Section 17(1)(b) of the Registration Act, 1908 provides that a document which purports to create or extinguish any right title or interest in the property of value of one hundred rupees and upwards in immoveable property is required to be registered. Section 49 of the Registration Act, 1908 provides that a document which is required to be registered shall not affect any immovable property unless it has been registered. Upon a combined reading of Section 17(1)(b) and Section 49 of the Registration Act, 1908, in my opinion, it cannot be said that the said provisions bars the institution of the suit based on an unregistered document. In my view, that would be too wide a proposition of law that no suit can be filed on an unregistered document which is

compulsorily required to be registered. At the most, if the suit is based on an unregistered document compulsorily required to be registered, the same may not result in a decree. However I am not prepared to accept the proposition that no suit based on unregistered document can be instituted and is required to be rejected under the provisions of Order 7 Rule 11 of CPC as being barred by provisions of Registration Act, 1908.

20. However, the application must succeed on the second ground raised that the suit does not disclose a cause of action as there is no clear right to sue. In that context, it would be profitable to refer to the decision of the Apex Court in the case of ***Dahiben vs Arvindbhai Kalyanji Bhanusali*** (supra) which has analysed the provisions of Order 7 Rule 11 CPC and has laid down the following guidelines in paragraph 23.2 to 23.15 :

23.2 The remedy under Order VII Rule 11 is an independent and 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.

23.3 The underlying object of Order VII Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that

further judicial time is not wasted.

23.4 [In Azhar Hussain v. Rajiv Gandhi](#) this Court held that the whole 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 in the following words :

“12. ...The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to.

23.6. Under Order VII Rule 11, a duty is cast on 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.

23.7. Order VII Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under :

“Production of document on which plaintiff sues or relies.–

(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory."

23.8. Having regard to Order VII Rule 14 CPC, the documents filed alongwith the plaint, are required to be taken into consideration for deciding the application under Order VII Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.

23.9. In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.

24.11. The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in [Liverpool & London S.P. & I Assn. Ltd. v. M.V.Sea Success I](#) which reads as :

"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

23.12. In *Hardesh Ores (P.) Ltd. v. Hede & Co.* the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the Court cannot embark upon an enquiry whether the allegations are true in fact.

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC.

23.14. The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of *Saleem Bhai v. State of Maharashtra*. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in *Azhar Hussain* case.

23.15. The provision of Order VII Rule 11 is 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.”

21. The Apex Court in paragraph 23.4 referred to the decision in the case of ***Azhar Hussain vs Rajiv Gandhi [1986 Supp SCC 315]*** which held that purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to be abortive should not be permitted to waste judicial time of the Court.

22. In paragraph 23.11, the Apex Court has held that the test for

exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. Applying the test laid down in paragraph 23.11 to the facts of the present case, the question to be answered is whether taking the averments in the plaint in its entirety would result in a decree of title being passed. In my view, the answer is in the negative having regard to the provision of Section 17(1)(b) read with Section 49 of the Registration Act, 1908.

23. Applying the law laid down by the Apex Court in the case of ***Dahiben (supra)*** to the facts of present case, in my opinion, the suit does not disclose a right to sue as the suit is for title based on an unregistered relinquishment deed which requires compulsory registration.

24. The question also to be considered is if the Plaintiff gives up prayer clauses (a) and (b), the residual prayer clauses (c) and (d) which seek relief of declaration that the sale deed is illegal and perpetual injunction would warrant continuance of suit. In support of this contention, learned counsel for the Respondent had sought to canvas that Defendant No.1 has executed the sale deed in excess of her

share. This submission cannot be accepted for the reason that upon reading of the plaint in its entirety, I do not find any challenge to the sale deed on the ground that there was alienation in excess of the share of Defendant No.1 or that the possession of the portion sold cannot be handed over to the transferee as the right of the subsequent transferee is to sue for partition and allotment of share. The suit is for title suit based on the unregistered relinquishment deed with the consequential challenge to the sale deed executed in favour of Defendant No. 2 to 4 based on the sole ownership of the Plaintiff.

25. Having regard to the above, it is required to be considered whether an action can be permitted to be continued which does not satisfy the test laid down by the Apex Court in paragraph 23.11 and applying the guideline laid down in paragraph 23.14 in case of ***Dahiben (supra)***. In my opinion, considering the admitted position that the document is an unregistered document and that the same is not pressed into service for any collateral purpose, the suit is without any merit as it does not disclose a right to sue.

26. The trial court while deciding the application has factually erred by holding that there is registered relinquishment deed in

favour of the Plaintiff. The trial court failed to appreciate that the suit was for title based on the notarised relinquishment deed qua the share of Defendant No 1. The Trial Court also failed to appreciate that Defendant No.1 did not invoke the power under clause (d) of Order 7 of Rule 11 of CPC on the ground of limitation but on the ground of bar by virtue of provisions of the Registration Act, 1908. The impugned order is therefore clearly unsustainable.

27. As regards the decisions relied upon by the learned counsel for the Respondents, the Apex Court in ***Srihari Hanumandas Totala (supra)*** has held that in order to decide whether the suit is barred by any law, it is the statement in the plaint which will have to be considered and it is not open to decide the issue on the basis of any other material including the written statement in the case. In the facts of that case, the application was filed under Order-VII Rule-11 of CPC on the ground of non payment of Court fees, non disclosure of cause of action and the suit being barred by *res judicata*. It was in that context of *res judicata* that the decision of the Apex Court was rendered. There is no quarrel with the proposition of law laid down in the said decision. However, the facts of the present case are completely different and the decision is as such inapplicable. The next decision which has been relied upon is the decision of the Apex Court

in ***Chhotanben (supra)***. This decision was pressed into service by the learned counsel for the respondent for the proposition that the suit being barred by limitation was a triable issue. I am afraid this decision also does not assist the case of the respondent for the reason that it is not the contention of defendant no.1 that the suit is barred by law of limitation. The last decision which has been relied upon by learned counsel appearing for the respondent is in the case of ***Gajara (supra)***. This decision was pressed into service in support of the contention that the purchaser of a coparcener's undivided interest in the joint family property is not entitled to possession of what he had purchased. In the discussion above, I have already held that upon reading of the plaint in its entirety, there is no challenge to the sale deed on the ground that the possession could not be handed over as the property was undivided and what is sought to be alienated is an undivided interest in the joint family property which the subsequent transferee is not entitled to possess and that only a right to sue for partition and for allotment of his share accrues to the subsequent transferee. It is open for the plaintiff to institute an independent suit challenging the sale deed as well as the possession.

28. In light of the discussion above, revision application is allowed. The impugned order dated 13th October 2022 is hereby

quashed and set aside and the suit being Special Civil Suit No. 1044 of 2022 stands rejected.

29. At this stage, learned counsel appearing for the respondents requests for stay of the order for a period of six weeks. The said request is opposed by learned counsel appearing for the applicant. Stay as requested is granted for a period of 6 weeks from the date of uploading of the order.

[Sharmila U. Deshmukh, J.]