



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

CIVIL REVISION APPLICATION NO. 117 OF 2023

1. Pravina w/o Laxman Bhatkar,
aged about 66 years, Occ. Pensioner.
2. Laxman s/o Shivram Bhatkar (since deceased), thr. LRs
- 2(a) Sau. Vrusha w/o Amit Wankhade,
aged about 35 years, Occ. Household,
R/o Besa Colony, Nagpur, Tq. & District Nagpur.
- 2(b) Neha d/o Laxman Bhatkar,
aged about 31 years, Occ. Household.
- 2(c) Ankush s/o Laxman Bhatkar,
aged about 29 years, Occ. Business,

Both 2(b) and 2(c) are
R/o Bhatkarwadi, Daryapur Road,
Sirso, Tq. Murtizapur, District – Akola.

...APPLICANTS/
ORIGINAL DEFENDANT NOS. 1 & 2

Versus

1. Bansilal Rambhau Bhatkar,
aged about 46 years, Occ. Agriculturist,
R/o Bhatkarwadi, Daryapur Road,
Sirso, Tq. Murtizapur, District – Akola.
2. Ulhas Mahadeo Bhatkar (since deceased),
through legal representatives :
- 2(a) Smt. Pratibha wd/o Ulhas Bhatkar,
aged about 60 years, Occ. Household.
- 2(b) Tanish s/o Ulhas Bhatkar,
aged Major, Occ. Labour.
- 2(c) Sau. Jaya w/o Varjit Gawai,
aged about 34 years, Occ. Household.

All are R/o Bhatkarwadi, Sirso,
Tq. Murtizapur, District – Akola.

2(d) Sau. Pallavi w/o Jaikumar Dongardive,
aged about 33 years, Occ. Household,
R/o Bhatkarwadi, Sirso, Tq. Murtizapur,
District – Akola.

...NON-APPLICANTS/
ORIGINAL PLAINTIFF AND DEFENDANT NO.3

Shri J.J. Chandurkar, Counsel for the applicants.
Shri V.A. Lohia, Counsel for non-applicant no.1.

CORAM : ANIL L. PANSARE, J.

ARGUMENTS WERE HEARD ON : DECEMBER 19, 2023

JUDGMENT IS PRONOUNCED ON : DECEMBER 22, 2023

JUDGMENT :

The applicants/original defendants have filed the present application under Section 115 of the Code of Civil Procedure, 1908 (for short “the Code”) questioning the legality, correctness and propriety of the order dated 6/5/2023 passed by the learned Joint Civil Judge, Junior Division, Murtizapur below Exh. 59 in Regular Civil Suit No. 26/2020. By the said application, the applicants have sought rejection of plaint in terms of Order 7 Rule 11 of the Code.

2] It appears that non-applicant no.1/original plaintiff has filed suit for partition, separate possession and permanent

injunction. According to him, the property in dispute is an agricultural land bearing Gat No. 254/2, admeasuring 1.62 HR, situated at Village – Sirso, Taluka – Murtizapur, District – Akola. The said property will be hereinafter referred to as “the suit property”. Non-applicant no.1/plaintiff states that one Sonabai w/o Shivramji Bhatkar was the owner of the suit property. She expired 20 years back. She had four sons and one daughter. She had, in her lifetime on 15/7/1998, prepared a will, which *inter alia* includes the suit property. The will has been registered before the Sub-Registrar’s office on 18/7/1998.

3] It is further the case of non-applicant no.1 that a two storied building, a godown and four rooms have been constructed on the suit property. The said Sonabai has excluded the constructed area in the suit property and bequeathed remaining agricultural land in favour of the father of the plaintiff namely Rambhau, original defendant no.2 – Laxman (since deceased) and now represented by applicant nos. 2(a) to 2(c) herein and original defendant no.3 – Ulhas (since deceased) and now represented by non-applicant nos. 2(a) to 2(c) herein. This property was to be distributed amongst these

three persons. Accordingly in the 7/12 extract, the entry as regards share of the persons named in the will, which comes to 0.54 R respectively has been taken. Though the area admeasuring 0.54 R is shown against each co-owner, considering the fact that the boundaries were not described in the will, separate share has been not mentioned in the 7/12 extract.

4] It is further the case of non-applicant no.1 that in the first week of 2020, he came to know from reliable sources that applicant no.1/original defendant no.1 is all set to sell 0.54 R land out of the suit property to third person. He also learnt that applicant no.1 intends to sell the middle portion of the suit property. Non-applicant no.1 accordingly demanded partition in the suit property in terms of the will dated 15/7/1998. The applicants herein refused and, therefore, the suit.

5] Applicant no.1 preferred an application under Order 7 Rule 11 of the Code on the ground that the suit is barred by limitation and further that the parties have already

acted upon the will and got their shares separated and lastly on the ground that the plaint does not disclose the real cause of action.

6] The learned Counsel for the applicants submitted that the will has been executed on 15/7/1998. The parties have acted upon the will. The shares amongst themselves have been divided. The suit property has been converted for non-agricultural purpose in the year 2004. He further submitted that the suit has been not properly valued. The valuation ought to be @ Rs.2,660/- per square meter. According to him, the learned trial Court has not considered these facts and swayed away with the averments made in the plaint, which could be said to be a clever drafting having camouflaged the real cause of action.

7] These submissions have been rightly countered by the learned Counsel appearing for non-applicant no.1/plaintiff. He has invited my attention to the order passed by the learned trial Court. The learned trial Court has rightly noted that the defence put forth by applicant no.1 cannot be considered while deciding the application filed under Order 7 Rule 11 of the

Code. It is a settled position of law that the averments made in the plaint can only be considered while deciding such application. It is further well settled that the averments so made should be accepted to be true on its face value and despite such acceptance, if the plaint is found to be not disclosing the cause of action or is found to be barred by law, then only can the plaint be rejected.

8] In the present case, the admitted position is that Sonabai Shivramji Bhatkar was the original owner. She has, by way of will dated 15/7/1998, which has been registered on 18/7/1998, bequeathed the suit property in favour of the plaintiff's father, applicant no.1 – Pravina and applicant no.2 – Laxman. As per the will, the beneficiaries were to get equal share in the property. He had apprehension that applicant no.1 may sell the middle portion of the suit property. Accordingly non-applicant no.1 in the first week of August – 2020 demanded partition. His request was turned down and, therefore, he filed the suit.

9] In the aforesaid backdrop, the grounds seeking rejection of plaint will have to be considered. The applicants herein have come-up with a case that the will has been acted upon and shares have been divided amongst the beneficiaries. This fact, however, has been not pleaded by non-applicant no.1 nor is there anything in the plaint or documents annexed with the plaint to show that the suit property has been partitioned in terms of the will. There appears no doubt that the will has been acted upon, but then it is nobody's case that in the will, the shares of the beneficiaries have been described with boundaries. In fact, the will indicates that the beneficiaries will have equal share in the suit property. This share of 0.54 R each has been taken note of in the revenue record, but as co-owner. In the circumstances, it cannot be said that the suit property has been partitioned. Hence the submissions to that effect, being incorrect, are rejected.

10] Another ground put forth is that the suit is barred by limitation. Applicant no.1 expects that non-applicant no.1/plaintiff ought to have challenged the division of share immediately after the death of Sonabai or in the year 2004-05

when the suit property was converted for non-agricultural purpose. The learned trial Court has noted, and rightly so, that mere conversion of the suit property for non-agricultural purpose will not debar non-applicant no.1 from seeking partition. That apart, it is not the case of non-applicant no.1 that the suit property has been converted for non-agricultural purpose. Thus, there is no substance in the second ground as well.

11] The applicants have then stated that the suit is not properly valued. This aspect is something which is to be dealt with by the learned trial Court. If one goes through the provision made under Order 7 Rule 11 of the Code, it is evident that unless the learned trial Court has directed the plaintiff to correct the valuation and/or to pay Court fees and upon satisfaction that such valuation has been not corrected and/or the Court fees has been not paid within the stipulated time, the plaint cannot be rejected. In other words, merely on the plea of defendant that the suit is not properly valued or Court fees not paid, will not be itself sufficient to reject the plaint. In that sense, there is no merit in the third ground as well.

12] What transpires thus is that non-applicant no.1 has filed the suit for partition, separate possession and injunction on the ground that the suit property has been not partitioned. The cause of action arose in first week of 2020 when he sought partition on the ground that applicant no.1 is all set to create third party interest in the middle portion of the suit property. If these averments are taken to be true on its face value, there appears no merit in the grounds put forth by the applicants for rejection of plaint.

13] The learned trial Court has rightly considered these aspects and has passed a reasoned order while rejecting the application. No interference therefore is called for in the revisional jurisdiction. The revision application is accordingly dismissed.

JUDGE

Sumit