



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

CIVIL REVISION APPLICATION NO. 70 OF 2024

1. Punjabai Sakharam Nhavi,
(since dead through its Legal heirs)
- 1.1) Kadu Sakharam Shelke,
Age : 59 Years, Occ. Agriculture,
R/o. Dhondkheda, Tq. Bodwad,
Dist. Jalgaon.
- 1.2) Kamalbai Janardhan Borale,
Age : 61 Years, Occ. Household,
R/o. Godri, Tq. Jamner, Dist.
Jalgaon.
- 1.3) Shobhabai Nathu Shinde,
Age : 55 Years, Occ. Household,
R/o. Palaskhede, Tq. Jamner,
Dist. Jalgaon.
- 2) Gangabai Hari Nhavi,
Age : 92 Years, Occ. Household,
R/o. Shahapur, Tq. Jamner,
Dist. Jalgaon.
- 3) Rangabai Ramu Nhavi,
Age : 77 years, Occ. Household,
Dhamangaon Badhe, Tq. Motala,
Dist. Buldhana.
- 4) Venubai Tukaram Nhavi,
Age : 67 Years, Occ. Household,
R/o. Londhri, Tq. Jamner, Dist. Jalgaon
- 5) Vaijantabai Pandurang Nhavi,
Age : 72 Years, Occ. Household,
R/o. Nimkhedi Pimpri, Tq. Jamner,
Dist. Jalgaon.
- 6) Kasabai Parbat Nhavi,
(since dead through Legal heirs)
- 6.1) Suryabhan Parbat Nhavi,
(since dead through legal heirs)

- 6.1-A) Narayan Suryabhan Bodhare,
Age : 52 Years, Occ. Agriculture
- 6.1-B) Sanjay Suryabhan Bodhare,
Age : 46 Years, Occ. Agriculture
- 6.1-C) Vijay Suryabhan Bodhare,
Age : 44 Years, Occ. Agriculture,
Applicants Nos.6.1-A to 6.1-C are
R/o Nimkhedi Pimpri,
Tq. Jamner, Dist. Jalgaon
- 6.1-D) Ushabai Gopal Shinde,
Age : 47 Years, Occ. Household,
R/o. Paldhi, Tq. Jamner, Dist. Jalgaon.
- 6.1-E) Nirmalabai Sharad Parvate,
Age : 42 Years, Occ. Household,
R/o. Vitthal Rukhumai Nagar,
varangaon, Tq. Bhusawal, Dist. Jalgaon.
- 6-1F) Chandrbhagabai Gulabrao Vakhare,
Age : 37 Years, Occ. Household,
R/o. Kabarkheda Tq. Motala, Dist.
Buldhana.
- 6.2) Hari Parbat Nhavi,
(since dead through Legal heirs)
- 6.2-A) Sumitrabai Hari Nhavi,
Age : 64 Years, Occ. Household,
- 6.2-B) Pramod Hari Nhavi,
Age : 44 years, Occ. Agriculture
- 6.2-C) Arjun Hari Bodhare,
Age : 37 Years, Occ. Agriculture,
Applicants Nos.6.2-A to 6.2-C are
R/o. Nimkhedi Pimpri,
Tq. Jamner, Dist. Jalgaon.
- 6.2-D) Shakuntala Ganesh Nhavi,
Age : 34 Years, Occ. Agriculture
R/o Vakadi Tq. Jamner,
Dist. Jalgaon.

6.3) Eknath Parbat Nhavi,
Age : 62 Years, Occ. Agriculture,
R/o. Nimkhedi Pimpri,
Tq. Jamner, Dist. Jalgaon

6.4) Dhrupadabai Sampat Galbale,
Age : 72 Years, Occ. Agriculture,
R/o. Rohinkhede, Tq. Motala,
Dist. Buldhana.

... Applicants
(Orig. Defendants)

VERSUS

1. Pralhad Totaram Nhavi,
Age : 58 Years, Occ. Agriculture,

2. Ishwar Totaram Nhavi,
Age : 56 Years, Occ. Agriculture,
Both are R/o. Nimkhedi Pimpri,
Taluka Jamner, Dist. Jalgaon.

.. Respondents
(Resp. Orig. Plaintiffs)

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Shri. Anand I. Deshmukh, Advocate for the applicants.

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CORAM : SANDIPKUMAR C. MORE, J.
DATED : August 19, 2024

ORDER:-

1. Heard learned counsel for the applicants on admission.
2. The applicants/defendants have challenged the order dated 31.01.2024 passed by the learned Civil Judge, Junior Division, Jamner, District Jalgaon i.e. the learned trial Court below Exh. 38 in Regular Civil Suit No. 115 of 2022. Under the impugned order, the learned trial Court has rejected the application of the present applicants for rejection of the plaint under Order VII Rule 11 (d) of the Code of Civil Procedure being

barred by law of limitation.

3. On going through the impugned order as well as other documents on record, it appears that the respondents/plaintiffs have filed this suit for possession of their 1/7 share in the suit property and also for perpetual injunction restraining the applicants/defendants from alienating the suit properties during the pendency of the suit. The plaintiffs have claimed possession of their share in the suit properties as per the decree passed in Regular Civil Suit No. 3 of 1988. Admittedly, Regular Civil Suit No. 3/1988 was decreed on 28.11.2006. Further, it is also settled that only averments in the plaint are required to be considered while dealing with the application for rejection of the plaint. Respondents/plaintiffs have specifically pleaded that they were cultivating the suit property till the year 2016 and in the month of May 2016 they were forcibly dispossessed by the defendants and after that, when they demanded division of their shares from defendants on 3.5.2022, the defendants denied for the same and accordingly cause of action arose. The learned trial Court has rightly discussed the scope of Article 64 of the Limitation Act and held that the limitation for filing the suit for possession based on previous possession is twelve years and the limitation starts from the date of

dispossession. Further, as per Article 65 of the Limitation Act, the limitation for filing suit for the possession of immovable property based on title is twelve years and it starts when the possession of the defendants became adverse to the plaintiff. Therefore, considering this, unless the defendants claim about their possession being adverse to the plaintiffs, limitation would not start under Article 65 of the Limitation Act.

4. In the present suit the respondents/plaintiffs have given cause of action being arose for the first time in the month of May 2016, and thereafter on 30.05.2022. Therefore, the suit filed on 18.06.2022 is well within limitation.

5. Further, it appears that the learned trial Court has rightly observed that Articles 56, 58, 59 and 60 of the Limitation Act are not applicable to the present suit. Therefore, rejection of the application filed by the present applicants under Order VII Rule 11 (d) of the Code of Civil Procedure, at the hands of learned trial Court appears proper and needs no further interference. In view of the same, the present Civil Revision Application stands dismissed at admission stage.

(SANDIPKUMAR C. MORE, J.)

Y.S. Kulkarni