



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

CIVIL REVISION APPLICATION NO.99 OF 2024

1. Yashpal s/o Gangareddy Jedlawar,
Age : 30 years, Occu.: Agril.,
R/o.: Shahapur, Tq. Degloor,
District : Nanded (Defendant No.13)
2. Gundappa s/o Tukaram Gadge,
Age : 69 years, Occu.: Agril.,
R/o.: As above. (Defendant No.14)
3. Ashok s/o Sakharam Dubakwad,
Age : 40 years, Occu.: Agril.,
R/o.: As above.
4. Prakash s/o Sakharam Dubakwad,
Age : 35 years, Occu.: Agri.,
R/o.: As above.
5. Gangabai w/o Gangareddy Jedlawar,
Age : 54 years, Occu.: Agril.,
R/o.: As above.
6. Gangareddy s/o Gangaram Surkante,
Age : 55 years, Occu.: Agril.,
R/o.: As above.
7. Lingareddy s/o Gangram (bk) Surkante,
Age : 45 years, Occu.: Agril.,
R/o.: As above. **APPLICANTS**

VERSUS

1. The Government of Maharashtra
Through Hon'ble District : Collector,
Nanded.
2. The Tahsildar, Degloor,
District : Nanded.
3. The Revenue Inspector,
Shahapur, Tq. Degloor,

District : Nanded.

4. The Talathi Village Shahapur,
Tq. Degloor, District : Nanded.
5. The Dy. Director Land Records,
(Consolidation), Aurangabad.
6. The Consolidation Officer, Nanded,
District Superintendent Land Records,
Nanded in the area of District Collector
Office Nanded.
7. Shubham s/o Shankar Patil,
Age : 20 years, Occu.: Agri.,
R/o.: Shahapur, Tq. Degloor,
District : Nanded. (Original Plaintiff No.1)
8. Vaibhav s/o Shankar Patil,
Age : 18 years, Occu.: Agri.,
R/o.: Shahapur, Tq. Degloor,
District : Nanded. (Original Plaintiff No.2)
9. Prabhanna @ Parbatrao s/o
Shankarrao Patil,
Age : 75 years, Occu.: Agri.,
R/o.: Shahapur, Tq. Degloor,
District : Nanded.
10. Madhavrao s/o Shankarrao Patil,
Age : 67 years, Occu.: Agri.,
R/o.: Shahapur, Tq. Degloor,
District : Nanded.
11. Shankarrao Prabhanna Patil,
Age : 45 years, Occu.: Agri.,
R/o.: Shahapur, Tq. Degloor,
District : Nanded.
12. Balaji s/o Prabhanna Patil,
Age : 36 years, Occu.: Agri.,
R/o.: Shahapur, Tq. Degloor,
District : Nanded.
13. Rajenna s/o Bhumanna Rajmallu,
Age : 68 years, Occu.: Agri.,

R/o.: Shahapur, Tq. Degloor,
District : Nanded.

14. Gajanan s/o Chandrakantrao Kalyankar,
Age : 37 years, Occu.: Agri.,
R/o.: Shahapur, Tq. Degloor,
District : Nanded.
At present : Pandurang Nagar, Nanded.

15. Tukaram Sayanna Surkante,
Age : 72 years, Occu.: Agri.,
R/o.: Shahapur, Tq. Degloor,
District : Nanded.

..... **RESPONDENTS**

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Mr. Swapnil Patunkar, Advocate for applicants on behalf of J. P. Legal Associates.

Mr. D. B. Bhange, A.G.P., for Respondent Nos.1 to 6

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 02/07/2024.

ORDER :

1. Heard the learned counsel for the applicants and the learned AGP, who waives service for respondent Nos.1 to 6, on admission.

2. The present applicants, who are the original defendant Nos.13 to 16 and 18 to 21 in Regular Civil Suit No.3 of 2020 filed by the present respondent Nos.7 & 8 / original plaintiffs, have challenged order below Exhibit-38 dated 13/03/2024. The application Exhibit-38 was filed by the present applicants and original defendant No.22 for rejection of the plaint under Order-VII Rule 11

of CPC, which has been rejected by the learned trial court i.e. Civil Judge (Senior Division), Biloli, District : Nanded.

3. Brief facts are as under :

The original plaintiffs in the RCS No.3 of 2020, have claimed various reliefs in respect of the suit lands mentioned therein such as declaration of their joint ownership and recovery of possession, declaration of in all five sale deeds mentioned in the suit, being null and void and not binding upon them and for cancellation of mutation entries and perpetual injunction. According to the plaintiffs their grand-father, grand-uncle, father and uncle were the owners of the suit lands and therefore they are also having coparcenary rights in the suit lands. However, the suit lands were transferred by way of registered sale deeds depriving their coparcenary rights in the suit lands and therefore, they were constrained to file the aforesaid suit for the reliefs claimed above.

On the contrary, the present applicants / defendants below Exhibit-38 had filed an application for rejection of the plaint under Order – VII Rule 11 of CPC on the grounds such as the plaint does not disclose cause of action, there is a bar of jurisdiction under Section 99 of the Tenancy Act and Section 36 of Maharashtra Prevention of Fragmentation and Consolidation Act and that the

suit is hopelessly bared by Limitation Act since the sale deeds of 1994 to 2007, are challenged in the year 2020. The learned trial court after hearing the parties and considering material on record, has rejected application Exhibit-38 and hence this application.

4. The learned counsel for the applicants also relied on following judgments.

- i) *Dahiben vs. Arvinbhai Kalyanji Bhanusali (Gajra) (D) Thr. Lrs. and others, 2020 AIR (SC) 3310;***
- ii) *Umed Realators and others vs. Shobha Mahadeo Deshpande and others, 2017 (3) AIR Bom R 217;***
- iii) *Tanaji Narayandeo Pawar vs. Angad Shamrao Suryawanshi, 2021 (5) AIR Bom R 107 and***
- iv) *Order of this court in Civil Revision Application No.169 of 2023 in case of Tarvindarsingh Mahendrasingh Dhillan vs. Ambadas Asaram Mhaske and others, passed on 07/03/2024.***

5. The learned counsel for the applicants submits that there is no cause of action for filing such suit and it is hopelessly barred by Limitation Act and also there is a bar of Tenancy Act to entertain the suit. He pointed out that plaintiffs have shown illusive cause of action, which according to them arose in the year 2018. According

him, the suit is barred by limitation since the plaintiffs have challenged the sale deeds of 1994 to 2007 in the year 2020 i.e. beyond the limitation period of three years. He also claimed that since there is a pleading in respect of tenancy right, the Civil Court is not competent to decide the issue of tenancy and thus, the suit is barred by law. As against this, the learned AGP pointed out that though there is certain pleading in respect of tenancy right of certain persons, the said right is not under challenged in the present suit and the plaintiffs have challenged their coparcenary rights by excluding tenanted portion through their forefathers.

6. Heard rival submissions. Also perused documents on record.

7. It is significant to note that the applicants have claimed rejection of the plaint mainly on three grounds that there is no cause of action of plaint or whatever cause of action, it is illusive, suit is barred by Limitation Act and also the provisions of Hyderabad Tenancy Act. Though the learned counsel for the applicants has relied upon various judgments as mentioned above, but after going through the said judgments it appears that for rejection of the plaint only averments in the plaint are required to be gone in to alongwith documents annexed to the plaint. No defence of the defendants in written statement needs to be

considered. Further, so far as cause of action is concerned, it is the duty of court to ascertain whether it is illusory in nature or by way of crafty pleading to give go by to the bar created to the jurisdiction of civil court under various enactments.

8. Here the first objection of the applicants is that the plaintiffs have given illusory and false cause of action to bring the prayer of declaration in respect of sale deeds executed during the period from 1994 to 2007, within limitation. Admittedly, the sale deeds which the plaintiffs want to declare null and void and not binding on them, are executed during the period from 1994 to 2007. Ordinarily, a declaration for seeking the documents null and void is of three years. However, the period starts running from the date of knowledge of such execution. Here in this case the plaintiffs have specifically mentioned in the plaint para 10 that they came to know about the illegal acts of mutation entries and sale deeds for the first time in the month of January, 2018 and thereafter, started collecting the record. They also stated that after obtaining the revenue records and the documents, the defendants denied their right in the year 2019 and therefore, they were constrained to file the aforesaid civil suit. It is significant to note that nothing is there in the plaint that the plaintiffs were knowing about the aforesaid sale deeds prior to preceding three years of filing the suit. Even

from the documents annexed to the plaint, the defendants could not point out that the plaintiffs were having prior knowledge of execution of sale deeds. As such, from the observation of judgments relied by the learned counsel for the applicants, the cause of action given by the plaintiffs can be treated as an illusory or fabricated cause of action only if the plaint and documents annexed to it indicate that the plaintiffs were having such knowledge in advance. Therefore, whether the plaintiffs were having knowledge of execution of the sale deeds and the revenue record much before filing the suit, is to be ascertained on the basis of evidence and in absence of such evidence, it cannot be said that the aforesaid cause of action is fabricated or illusory and that the plaintiffs were well aware about the mutation entry and the sale deeds executed long back. Thus, the issue of limitation in this matter is a mixed question of law and facts and can be decided only on the basis of evidence. As such, at this juncture the plaint cannot be rejected on this ground.

9. So far as suit being barred by provisions of Hyderabad Tenancy Act is concerned, the learned counsel for the applicants / defendants vehemently argued that plaintiffs themselves have claimed in the plaint para 4 in respect of some of the area i.e. 12 R land each from Survey No.137 is shown in the name of Linguram

Lachmanna and Narsimulu Jiyar as per Tenancy Law and therefore, the question of tenancy cannot be determined by the Civil Court. However, it appears that there is only pleading in respect of some portion being declared as tenanted portion but in the entire plaint those tenancy rights are not challenged by the plaintiffs. On the contrary, it appears that the plaintiffs have claimed the remaining suit lands excluding the aforesaid tenanted portion through Prabhanna and Madhavrao. As such, when the tenancy right of any person is not challenged in the suit, then there is no need to determine the tenancy of those persons by a competent authority as contemplated in the provisions of Hyderabad Tenancy Act. As such, on that count also the plaint cannot be rejected. Thus, considering all these aspects, the rejection of the application under Order – VII Rule 11 of CPC filed by the present applicants at the hands of the learned trial court, does not appear perverse. As such, the present application stands rejected at admission stage and disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)

10. After pronouncement of the order, the learned counsel for the applicants requested to grant stay to the order. However, the order

is passed considering the merit of the case and therefore, request made by the learned counsel for the applicants stands rejected.

(SANDIPKUMAR C. MORE, J.)

VS Maind/-