

Ajay

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

CIVIL REVISION APPLICATION NO. 241 OF 2024

Nathu Sabaji Buchade (Deceased)

Through his Legal Heirs

Parvati Nathu Buchade and Ors.

.. Applicants

Versus

Tarabai Khandu Amale and Ors.

.. Respondents

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- Mr. Pramod J. Pawar, Advocate for Applicants.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 16, 2024.

P.C.:

- 1.** Heard Mr. Pawar, learned Advocate for Applicants.
- 2.** The present Civil Revision Application takes exception to the order dated 06.01.2024 passed by the learned Trial Court in Application filed below Exhibit “44” in Regular Civil Suit No.384 of 2022 under Order VII Rule 11 of the Code of Civil Procedure, 1908. Being aggrieved, Defendant Nos.2 and 3 who had filed the Application below Exhibit “44” are the Applicants before me.
- 3.** Briefly stated, Regular Civil Suit No.384 of 2022 is filed by Tarabai Khandu Amale, Sanjana Eknath Kate and Sangita Ankush Ghanvat seeking partition of the Suit property belonging to their father Shri. Nathu Sabaji Buchade (Defendant No.1) to the extent of their 1/7th share in the Suit property. Defendant No.1, their father expired

immediately after filing of the Suit. Defendant No.2 is their mother. Defendant No.3 is their sole brother. Admittedly the Suit properties are ancestral properties derived by Defendant No.1 after partition in 2012. Defendant No.3 has also expired. His legal heirs are on record. The premise of the Suit is that the Defendants, namely Defendant Nos.1, 2 and 3A did not give the share of the 3 sisters and Defendant No.4 namely Arunee Maruti Prashale, the 4th sister and in collusion with each other partitioned the ancestral property by executing a deed registered with the Sub-Registrar of Assurances, Mulshi below Sr. No.95 of 2013 by keeping the Plaintiffs and Defendant No.4 in the dark.

4. Reading of the Suit plaint admittedly reveals that the 3 Plaintiffs, Defendant No.3 (since deceased) and Defendant No.4 are siblings and the legal heirs of Nathu Sabaji Buchade. Suit properties are delineated in paragraph No.1 of the Suit plaint. *Prima facie*, it is seen that there are atleast 5 agricultural land parcels. It is contended by the Plaintiffs that the Suit properties are ancestral properties. One of the submissions advanced by Mr. Pawar in support of the contesting Defendants in the Application filed under Order VII Rule 11 of the CPC is that the Suit properties are self acquired properties of Nathu Sabaji Buchade. However pleadings in the Suit plaint clearly reveal to the contrary that the Suit properties were received by Defendant No.1 - Nathu Sabaji Buchade pursuant to a division of the ancestral properties

with his brother namely Dattu Sabaji Buchade and his cousin brother, namely late Chindhu Ganpat Buchade pursuant to a registered partition deed dated 12.10.2012. Mr. Pawar has not been able to show the acquisition of the 5 Suit properties by Defendant No.1 on his own as his self acquired properties.

5. In so far as partition of the Suit properties are concerned, the document which holds the field has been registered in the year 2013 by Defendant Nos.1, 2 and original Defendant No.3. Plaintiffs and Defendant No.4 are not a party to the said document.

6. Thus, this is a clear case of usurpation of the properties by Defendant Nos.1, 2 and original Defendant No.3 to the exclusion of the 3 Plaintiffs and Defendant No.4. The law in respect of succession, rather the Hindu Law of succession of property is clearly well settled and the daughters are entitled to an equal share in the ancestral properties. It is further seen that the brother namely, Defendant No.3 has thereafter gifted and exchanged the shares received by him inter se in respect of the Suit properties. There are 4 gift deeds and one deed of exchange. Once again this is to the exclusion of the Plaintiffs and Defendant No.4. The averments made in paragraph No.9 of the plaint clearly show that such deed of exchange and gift deeds have been given and exchanged between the brother and his family members between 2019 – 2020.

7. Thus it is seen from the above, that original Defendant No.3 Sambhaji Nathu Buchade has usurped the entire property unto himself and has surreptitiously transferred those properties by virtue of four gift deeds and one deed of exchange to his own family members. Suit is filed in the year 2022 after the Plaintiffs learnt about the said transfer of properties through gift deeds and the deed of exchange. Such averments are made in paragraph No.16 of the Suit plaint. The reliefs prayed for in the Suit namely prayer clauses 'b' and 'c' seek partition of the estate and share of the Plaintiffs to the extent of 1/7th share for each of them by metes and bounds.

8. In the above backdrop, Application is filed by Defendant Nos.2 and 3 under Order VII Rule 11 of the CPC on the ground that since partition has already been effected amongst Defendants in the year 2013, the present Suit is barred by limitation. The learned Trial Court in its order dated 06.01.2024 has clearly returned a finding about which there can be no dispute at this stage that the property enuring to the benefit of Defendants is ancestral Hindu undivided property and the rights in that property are not crystallized in favour of the rightful legal heirs of deceased Nathu Sabaji Buchade. Infact, such a ground cannot be agitated by Defendant Nos.2 and 3, as a clear fraud is committed by Defendant No.3 to exclude the Plaintiff and Defendant No.4

9. Considering the aforementioned facts which are delineated after perusing the Suit plaint, the learned Trial Court has clearly held that a trial is imminently necessary since in the opinion of the Court the Plaintiffs have been deprived of their legitimate share in their ancestral properties. It is seen that, substantive further rights have been created by original Defendant No.3 in favour of his wife, his kith and kin as also third parties by virtue of the gift deeds and exchange deed to which the Plaintiffs are not a party.

10. In that view of the matter, the learned Trial Court has further rightly held that the Plaintiffs are not required to pay *ad valorem* Court Fee on the market value of those properties. In any event the Plaintiffs are incidentally female coparceners, who would also otherwise be entitled to the relief of non payment of *ad valorem* Court fee. This issue is not pressed by Mr. Pawar.

11. In view of the above, I am of the clear opinion that the Suit as filed by the Plaintiffs is clearly maintainable in the facts and circumstances of the present case and the above facts do not permit and entitle the Defendant Nos.2 and 3 to maintain the Application under Order VII Rule 11 of the CPC on the ground of limitation. It would be a travesty of justice if the Application filed by Defendant Nos.2 and 3 is countenanced since this is a clear usurpation of ancestral properties solely by the Defendant No.3 unto himself

depriving the legitimate share of the 3 Plaintiffs and Defendant No.4 who are entitled to their share in accordance with law.

12. In that view of the matter, the order dated 06.01.2024 is sustained and upheld. Resultantly, Civil Revision Application is dismissed.

[MILIND N. JADHAV, J.]

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