

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.148 OF 2024

1. **Shri.Sharad Genubhau Dangat**
Age : 73, Occupation : Agriculture,
Residing at : Shivane, Taluka : Haveli, ...Applicant No.1
District : Pune. (Original Defendant No.9)
2. **Shri.Suresh Genubhau Dangat**
Age : 78, Occupation : Agriculture,
Residing at : Shivane, Taluka : Haveli, ...Applicant No.2
District : Pune. (Original Defendant No.10)

Versus

1. **Smt.Sakhubai Vishwanath Borate**
Age : 79, Occupation : Housewife,
Residing at : S.No.54/6F, Borate Mala,
Near Krushnaleela Society, Kothrud, ...Respondent No.1
Pune : 411 038. (Original Plaintiff)
2. **Shri.Martand Pandharinath More**
Age : 84, Occupation : Agriculture,
Residing at : Kopare, Taluka : Haveli, ...Respondent No.2
District : Pune. (Original Defendant No.1)
3. **Smt.Kaushalya Pundalik Karle**
Age : 80, Occupation : Housewife,
Residing at : Karle Complex,
Near Ahire Gate, Uttamnagar,
Shivane, Taluka : Haveli, ...Respondent No.3
District : Pune. (Original Defendant No.2)
4. **Smt.Godavari Dnyanoba Kunjir**
Age : 80, Occupation : Housewife,
Residing at : Kunjirwadi, Theur, ...Respondent No.4
Taluka : Haveli, District : Pune. (Original Defendant No.3)

5. **Smt.Nanda Vasant Ghule**
Age : 76, Occupation : Housewife,
Residing at : Flat No.1, Asawari Building,
Nanded City, Taluka : Haveli, ...Respondent No.5
District : Pune. (Original Defendant No.4)
6. **Smt.Vaishali Santosh Borate**
Age : 48, Occupation : Housewife,
Residing at : S.No.54/6F, Borate Mala,
Near Mahatma Society, Kothrud, ...Respondent No.6
District : Pune. (Original Defendant No.5)
7. **Smt.Rupali Narendra Padwal**
Age : 47, Occupation : Housewife,
Residing at : S.No.8/15, Anand Colony,
Shahu Colony, Near Galli No.11, ...Respondent No.7
Karve Nagar, Pune : 411 038. (Original Defendant No.6)
8. **Smt.Chaitrali Ramdas Pokale**
Age : 45, Occupation : Housewife,
Residing at : S.No.2/3, Pasodi,
Near Bharavnath Temple, Dhayari, ...Respondent No.8
Taluka : Haveli, Pune : 411 041. (Original Defendant No.7)
9. **Smt.Santoshi Anil Borate**
Age : 43, Occupation : Housewife,
Residing at : Flat No.1, Jijai Plaza,
Near Eklavya College, Kothrud, ...Respondent No.9
Pune : 411 038. (Original Defendant No.8)

Mr.Aditya R. Deshmukh:-	Advocate for Applicants.
Mr.A.B.Vagyan i/b. Mr.Pankaj Kandhari:-	Advocate for Respondent Nos.1, 3, 5 to 9.

CORAM : S. M. MODAK, J.

DATE : 18th NOVEMBER 2024

P.C. :-

1. Heard learned Advocate for the Applicants / Defendant Nos.9 and 10 and learned Advocate for the Respondent No.1 / Plaintiff and Respondent Nos.3 and 5 to 9.

2. One Pandharinath Narayan More executed a sale-deed in respect of a Suit land on 11th March 1967. He is no more. His daughter – Plaintiff filed a Suit in the year 2021 challenging the sale-deed and also claiming the partition. Her contention in the Plaint is as follows:-

- (a) The suit land was purchased by her father Pandharinath from the proceeds of sale of another joint family property. (Para No.4).
- (b) As it is a joint family property, her father Pandharinath is not having an exclusive right to sell the property without her consent and consent of Defendant Nos.1 to 4. (Para No.6).
- (c) Deceased Pandharinath sold suit land to Defendant No. 10 by executing registered sale deed dated 11 March 1967.
- (d) Though, this is a document of the year 1967, she claims that one incident that took place in the month of December-2019 about erecting teen sheets in the Suit property (Para No.5), she made an inquiry with the Office of Sub-Registrar and got knowledge about the sale-deed dated 11th March 1967.
- (e) She contends, that is how, the suit is within limitation.

3. Defendant Nos.9 and 10 who are the developer and the purchaser, respectively of the suit land filed an Application for rejection of the Plaint on the ground that it is barred by Law of Limitation (page 13). They have raised various contentions, however they cannot be considered while deciding such Application. Reason is it is a settled law that only averment in the plaint needs to be looked into at that stage. It is rejected by the trial Court as per the order dated 7th October 2023. (Page Nos.22-26). The trial Court observed in Para No.7:-

“The Suit is within limitation as per the provisions of Article 58 of the Limitation Act, 1963. If, there is a relief of declaration that sale-deed is not binding, Suit can be filed within three years”.

The trial Court further observed in set of facts:-

“The issue of limitation is mixed question of law and facts and it requires evidence”.

4. During arguments, learned Advocate for the Applicants was asked about the observations made in the two judgments referred by the trial Court in Para No.3 of the impugned order. It deals with *the principle of limitation (Suit is barred if it is filed ten years from date of execution of registered sale deed) and if material fact is not pleaded,*

how it can be an incomplete cause of action. Learned Advocate for the Applicants was asked whether he wants to rely upon these citations, he submitted that he is restricting his arguments only to the ground that the suit is barred by law not on the basis of Law of Limitation but on the basis of the proviso to Section 6 of the Hindu Succession Act, 1956.

Equal right of daughter as per Amendment Act, 2005

5. It is true that as per the Amendment of 2005, the daughters have been treated as coparcener in a joint Hindu family property just like a son, if certain conditions are fulfilled Mr.Deshmukh places reliance on the proviso to Section 6(1) of the Hindu Succession Act as amended. The proviso reads thus—

“6. Devolution of interest in coparcenary property.—(1)

On and from the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—

(a) by birth become a coparcener in her own right the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said

coparcenery property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004”

It is true, as per the proviso, disposition or alienation that has taken place before 20th December 2004 are protected. Meaning thereby the sale deed in question of the year 1967 cannot be challenged by the Plaintiff Sakhubai on the basis of 2005 Amendment Act. To buttress his submission, he relied upon the observations in cases of:-

- (i) ***Ganduri Koteshwaramma and Another V/s. Chakiri Yanadi and Another*¹.**
- (ii) ***Vineeta Sharma V/s. Rakesh Sharma and Others*².**
- (iii) ***Sarjerao Dhondiba Sarode and others V/s. Kamal Kerubhau Pachange and others*³**

According to learned Advocate for the Respondent No.1, this issue cannot be decided in an Application under Order VII, Rule 11 of the Code of Civil Procedure, 1908 (“CPC”) but evidence has to be adduced.

1 (2011) 9 SCC 788.

2 (2020) 9 SCC 1.

3 2018(5) Mh.L.J. 323.

6. Considering the submission about not pressing the issue of limitation, I am not dealing with the issue of limitation but restricting myself to the objection that the suit is barred by law. Admittedly, the ground of bar of suit on the basis of the proviso was not taken before the trial Court. It being question of law, I have given an opportunity to canvass arguments to both the sides.

7. It is true the word “*law*” is interpreted as ‘not only an Act passed by the Legislatures’ but also ‘the law laid down by the Supreme Court’. There cannot be any dispute about the effect of amendment in the provisions of Section 6 and the proviso. Learned Advocate for the Applicants also submitted that in the sale-deed of 1967, even the father Pandharinath has mentioned that it is a self-acquired property and as such, claim of Plaintiff about joint property is negated.

8. Considering the objections, the issue to be decided by the Court is, whether the benefit of proviso to Section 6 of the Hindu Succession Act can be given at this stage under the provisions of Order VII, Rule 11(d) of CPC or whether parties need to be relegated for trial of suit.

9. The Plaintiff has challenged the competency of her father to sell the property by way of an exclusive right. This grievance has to be

tested on the touchstone of the wordings of the proviso. That is to say, *‘whether the grievance of Defendant Nos.9 and 10 fall within the proviso, that is to say, the sale-deed of the year 1967 is protected or not’* can be decided without evidence. It means, it cannot be challenged. Admittedly, the vendor of that sale-deed—Pandharinath is no more. It is a settled law that only the averments in the Plaint need to be considered while dealing with an Application under Order VII, Rule 11 of CPC.

10. Considering all these contentions, this Court feels that this issue even though it is a question of law cannot be adjudicated in an Application moved as per the provisions of Order VII, Rule 11(d). It is for the reason, it requires recording of evidence, that is to say, the suit property whether it is inherited property or not and whether the transaction is protected as per the proviso or not. The averments of the Plaint are *prima facie* sufficient to take this view. No doubt the sale deed at this stage is not disputed. What needs consideration is source of acquisition of property by deceased-Pandhiranath and its subsequent sale in the year 1967. So, I am not inclined to accept this ground so as to reject the Plaint.

11. With these observations, the **Petition is dismissed**.
12. There are no observations by this Court on merits. The trial Court to decide the suit on merits.

[S. M. MODAK, J.]