

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

CIVIL REVISION APPLICATION NO. 603 OF 2024

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| 1. | Santosh Parshuram Avhad |] |
| | Age – 45 years, Occu. - Agriculture |] |
| 2. | Jayshri Santosh Avhad |] |
| | Age – 39 years, Occu. - Agriculture |] |
| | Both 1 & 2 R/o. At Post Patas, |] |
| | Tal. Daund, Dist. Pune. |] |
| 3. | Madhukar Sopanrao Shirsat |] |
| | Age – 66 years, Occu. - Agriculture |] |
| 4. | Tulshiram Sopan Shirsat |] |
| | Age – 56 years, Occu. - Agriculture |] |
| | Both 3 & 4 R/o. At Post Rui, |] |
| | Near Maruti Mandir, |] |
| | Tal. Baramadi Dist. Pune. |] |
| 5. | Shivaji Dnyandeo Devkate |] |
| | Age – 57 years, Occu. - Agriculture |] |
| 6. | Prathaviraj Dadasaheb Redke |] |
| | Age – 32 years, Occu. - Agriculture |] |
| | R/o. Flat No. 09, New Ankita Residency, |] |
| | Gadital, Hadapsar, Disst. Pune-411028 |] |
| 7. | Sham Laxman Pansare |] |
| | Age – 82 years, Occu. - Agriculture |] |
| 8. | Dipak Laxman Pansare |] |
| | Age – 69 years, Occu. - Agriculture |] |
| 9. | Pramila Laxman Pansare |] |
| | Age – 78 years, Occu. - Housewife |] |
| 10. | Shriniwas Sham Pansare |] |
| | Age – 51 years, Occu. - Agriculture |] |

11. Shirish Dipak Pansare]
Age – 32 years, Occu. - Agriculture]
12. Rajni Sham Pansare]
Age – 76 years, Occu. - Housewife]
Applicants No.7 to 12 R/o. Ahilya]
Housing Society, Loop Nagar Road,]
Yerwada, Dist. Pune.]... Applicants

Versus

Avinash Shivram Pansare]
Age – 51 years, Occu. - Agriculture]
R/o. At Post Patas,]
Tal. Daund, Dist. Pune.]... Respondent

Mr. Jitendralal P. Gorane a/w. Ms. Vidya Gorane and Mr. Abhijit A. Devkhile :	Advocates for Applicants.
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CORAM : S. M. MODAK, J.**DATE : 9th DECEMBER 2024****P.C. :-**

1. Heard learned Advocate for Petitioners/ Defendants. They have challenged the order of rejecting their Application filed as per the provisions of Order VII Rule 11 of Code of Civil Procedure, 1908 [CPC]. It was filed on following two grounds :-

- (i) absence of cause of action; and
- (ii) barred by law of limitation.

2. Learned trial Court Judge, Daund has rejected their Application as per order dated 6th September 2024 (Page No.24). It is challenged on behalf of the Defendants. Learned Advocate has invited my attention to the following documents/ averments in the Plaint :-

- (i) The copy of Plaint in which present petitioners are the Defendants whereas present respondent is the sole Plaintiff (Page No.25).
- (ii) The averments in the Plaint showing the description of the land (paragraph No.1).
- (iii) How the Plaintiff got title (paragraph No.2).
- (iv) The sale deed executed in between Defendants No.1 to 6 as purchasers on one hand and Defendants No.7 to 9 as vendors on the other hand. It is dated 29th of September 2023.
- (v) This sale deed is in respect of Gat No.886 which is adjoining land and the suit land is described in paragraph No.1 as Gat No.887.
- (vi) An attempt made by Defendants No.1 to 6 in encroaching upon the suit land.

- (vii) The Cause of action given in is 12th October 2023. (Para 6)
- (viii) Copy of 7/12 extract is on Page No.31. Names are – Shyam Laxman Pansare, Dipak Laxman Pansare and Pramila Laxman Pansare who are predecessor in title of the Plaintiff. The contention is their area is only 8 R whereas the area of entire Gat number is larger.
- (ix) Copy of Application for rejection of plaint on Page No.36 and the averments therein.

3. Learned Advocate for the Petitioners made following submissions :-

- (a) Even though the land belonging to predecessor in title is limited the claim is made for the larger land.
- (b) My attention is invited to the observations made in case of *The Church of Christ Charitable Trust & Educational Charitable Society vs. M/s. Ponniamman Educational Trust*.¹ and more specifically paragraph No.5 (wherein point for determination are framed.) Meaning of cause cause of action in paragraph No.8 and the manner of pleading as per the forms annexed to the CPC paragraph No.11)

4. When the averments in the plaint are perused it is clear that it is filed on the basis of cause of action disclosed in paragraph No.6 dated

¹ 2012 (8) SCC 706.

12th October 2023. It is settled law that the Application under provisions of Order VII Rule 11 has to be decided only on the basis of averments in the Complaint and the Annexures. The Court has to look into the averments and come to *prima facie* conclusion that whether the Suit discloses cause of action or not and whether the Suit is in time or not. “Whether these averments are sufficient to decree the suit or not and whether those averments are supported by documents or not” that cannot be considered while deciding the Application. Because the legislatures have incorporated these provisions only for the reason that the Defendants cannot be compelled to face long drawn trial. But if the Defendants are making a grievance for which evidence is required to be adduced, recourse to these provisions is abuse of provisions of law.

5. This Court feels the submissions made before this Court are beyond the scope of provisions of Order VII Rule 11 of CPC. The Defendants can take all these pleas in the Written Statement. The Hon’ble Supreme Court has interpreted the meaning of the words ‘*cause of action*’. It contains bundle of facts. It is also true that the entire averments in the Complaint are required to be considered while deciding whether cause of action is there or not. It is not the issue

“when the Plaintiff acquired rights” but it is *“the cause of action that Defendants tried to encroach upon the land of the Plaintiff”* determines timely action. Whether the Plaintiff has got right to object to the Defendants’ land or not and whether really speaking Defendants are encroaching upon the Plaintiff’s land or whether they are using their land or not are the issues which can be decided only after the evidence. There are no observations about merits. Both the parties can plead their case depending upon stage of suit.

6. With these observations I pass following order :-

ORDER

- i) Writ Petition stands dismissed.
- (ii) There shall be no order as to costs.

[S. M. MODAK, J.]

KISHOR
VISHNU
KAMBLE

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