



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL REVISION APPLICATION NO.28 OF 2023
WITH
CIVIL APPLICATION NO.2430 OF 2024**

Ravi Bhaskar Wattamwar,
Age: 52 years, Occu: Business,
R/o. Mid and Hote, Gokul Nagar,
Nanded, Tq. & Dist. Nanded. ..Applicant

Versus

1. BabanraoNarbaji More @ Baba s/o Naru More,
Age 62 years, Occu: Retired,
R/o Vasarni, At Present Ramrao Pawar Marg,
Shrinagar, Nanded. Tq. & District Nanded.
(Original Plaintiffs)
2. Sushant s/o Tuljaram Rathor
R/o Irwara Bazar, Nanded.
Tq. & District Nanded.
3. Sunil s/o Tuljaram Rathor Deceased, through LRS-
 - 3/1. Sandhya w/o Sunil Rathor,
Age 45 years, Occu: Household.
 - 3/2. Medha d/o Sunil Rathor,
Age 24 years, Occu: Household.
 - 3/3. Swastik s/o Sunil Rathor,
Age 22 years, Occ: Business,
 - 3/3. Suraj s/o Sunil Rathor,
Age 20 years, Occu: Business,

All R/o Near Shrishitala (Pochhama)
Mata Mandir, Itwara, Nanded.
4. Hirasinha s/o Anantramsinha Chavan
Deceased, Through: LRs-
 - 4/1. Dilipsinha s/o HirasinhaChavan,
Age 46 years, Occu: Business.
R/o CIDCO, Nanded.

- 4/2. Shilabai w/ Ranjitsinha Chavan,
Age 43 years, Occu: Household,
R/o Chouphala, Nanded.
- 4/3. Gurusinha s/o Hirasinha Chavan,
Age 42 years, Occu: Business.
R/o Vazirabad, Nanded.
- 4/4. Bhagwansinha s/o Hirasinha Chavan,
Age 40 years, Occu: Business,
R/o Kautha, Tq. & Dist. Nanded.
- 5. Purbhaji Baba More, Deceased, Through LRS-
- 5/1. Gangadhar s/o Purbhaji More,
Age 70 years, Occu: Agri.
R/o Vasarni, Tq. & Dist. Nanded.
- 6. Ganesh s/o Purbhaji More, Deceased, Through LRS-
- 6/1. Shalanba Ganesh More,
Age 55 years, Occu: Household.
- 6/2. Gajanan S/o Ganesh More,
Age 40 years Occu: Agri.
- 6/3. Rama s/o Ganesh More,
Age 35 years, Occu: Agri.

All R/o Vasarni, Tq. & Dist. Nanded.
- 7. Balaji s/o Padurang More, Deceased, Through LRs-
- 7/1. Muktabai Balaji More,
Age 60 years, Occu: Household.
- 7/2. Dinesh s/o Balaji More,
Age 35 years Occu: Driver,
Both R/o Gokulnagar, Laxmi Niwas,
Bhokar, Tq. Bhokar, District Nanded.
- 8. Govind Pandurang More, Deceased, Through: LRS-
- 8/1. Rekhabai w/o Govind More,
Age 50 years, Occu: Household.

- 8/2. Dipak s/o Govind More,
Age 35 years, Occu: Mistari
R/o Vasarni. Dist. Nanded.
9. Suresh s/o Pandurang More, Deceased, Through LRS-
- 9/1. Mangalbai Suresh More,
Age 45 years, Occu: Household.
- 9/2. Vikas s/o Suresh More,
Age 25 years, Occu: Labour.
- 9/3. Akash s/o Suresh More,
Age 22 years, Occu: Labour,
R/o Vasarni, Dist.Nanded.
10. Shankar s/o Naru More (Deceased, LRS-
- 10/1. Lilavati w/o Shankar More,
Age 40 years, Occu: Labour.
- 10/2. Raju s/o Shankar More,
Age 40 years Occu: Labour.
- 10/3. Balu s/o Shankar More,
Age 36 years, Occu: Labour.
- 10/4. Ravi s/o Shankar More,
Age 34 years, Occu: Service,

All r/o Vasarni, Tq. & Dist. Nanded.
- 10/5/ Anusaya Sanjay Dashrathe,
Age 38 years Occu: Household,
R/o Vadsad, Tq.Pusad, Dist. Yeotmal.
11. Bhaskar s/o Maroti Wattamwar,
Deceased, Through: LRS-
- 11/1. Rupesh S/o Bhaskar Wattamwar,
Age Major, Occu: Business.
- 11/1. Rajesh s/o Bhaskar Wattamwar,
Age Major, Occu: Business,

All R/o Mid & Hotel, Gokulnagar,
Nanded.Dsit.Nanded.

12. Vithal s/o Mlappa Shetty,
Age 45 years, Occu: Hotel,
R/o Sangavi, Tq. & Dist. Nanded. ..Respondents
(Orig. Respondent Nos.1 to 11)

AND
CIVIL REVISION APPLICATION NO.29 OF 2023
WITH
CIVIL APPLICATION NO.2429 OF 2024

1. Rupesh s/o Bhaskar Wattamwar
Age: 55 yrs., Occu: Business,
R/o. Mid & Hote, Gokul Nagar,
Nanded, Tq. & Dist. Nanded.
2. Rajesh s/o Bhaskar Wattamwar
Age: 54 yrs., Occu: Business,
R/o. Mid & Hote, Gokul Nagar,
Nanded, Tq. & Dist. Nanded. ..Applicants
(Ori. Respondent Nos.10/2 and 10/3)

Versus

1. BabanraoNarbaji More @ Baba s/o Naru More,
Age 62 years, Occu: Retired,
R/o Vasarni, At Present Ramrao Pawar Marg,
Shrinagar, Nanded. Tq. & District Nanded.
(Original Plaintiffs)
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R/o Irwara Bazar, Nanded.
Tq. & District Nanded.
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Age 45 years, Occu: Household.
- 3/2. Medha d/o Sunil Rathor,
Age 24 years, Occu: Household.
- 3/3. Swastik s/o Sunil Rathor,
Age 22 years, Occ: Business,
- 3/3. Suraj s/o Sunil Rathor,
Age 20 years, Occu: Business,

All R/o Near Shrishitala (Pochhama)
Mata Mandir, Itwara, Nanded.

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Age 43 years, Occu: Household,
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Age 40 years Occu: Agri.
 - 6/3. Rama s/o Ganesh More,
Age 35 years, Occu: Agri.

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Age 35 years Occu: Driver,
Both R/o Gokulnagar, Laxmi Niwas,
Bhokar, Tq. Bhokar, District Nanded.
8. Govind Pandurang More, Deceased, Through: LRS-
- 8/1. Rekhabai w/o Govind More,
Age 50 years, Occu: Household.
- 8/2. Dipak s/o Govind More,
Age 35 years, Occu: Mistari
R/o Vasarni. Dist. Nanded.
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- 9/1. Mangalbai Suresh More,
Age 45 years, Occu: Household.
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Age 25 years, Occu: Labour.
- 9/3. Akash s/o Suresh More,
Age 22 years, Occu: Labour,
R/o Vasarni, Dist.Nanded.
10. Shankar s/o Naru More (Deceased, LRS-
- 10/1. Lilavati w/o Shankar More,
Age 40 years, Occu: Labour.
- 10/2. Raju s/o Shankar More,
Age 40 years Occu: Labour.
- 10/3. Balu s/o Shankar More,
Age 36 years, Occu: Labour.
- 10/4. Ravi s/o Shankar More,
Age 34 years, Occu: Service,

All r/o Vasarni, Tq. & Dist. Nanded.
- 10/5/ Anusaya Sanjay Dashrathe,
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Age Major, Occu: Business.

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12. Vithal s/o Mlappa Shetty,
Age 45 years, Occu: Hotel,
R/o Sangavi, Tq. &Dist. Nanded. ..Respondents
(Orig. Respondent Nos.1 to 11)

...
Mr. A. S. Bajaj, Advocate for Applicants.
Mr. P. R. Katneshwarkar, Senior Advocate i/by Mr. G. G.
Suryawanshi, Advocate for Respondent No.1.

...
CORAM : S. G. CHAPALGAONKAR, J.
DATED : 09th MAY, 2025.

JUDGMENT :-

1. The applicants / original defendants impugns order dated 19.12.2022 passed on their Applications filed below Exhibits 68 and 55 respectively, seeking rejection of plaint in Regular Civil Suit No.106 / 2022 pending before Civil Judge Junior Division at Nanded. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The respondent / plaintiff instituted Regular Civil Suit No.106/2022 before Civil Judge Junior Division, Nanded, seeking relief of declaration of ownership to the extent of 1/3rd share in land Survey No.3 (Gut No.28), situated at village Rahimpur, Tq. and Dist. Nanded. The plaintiff further seeks declaration that sale

deeds dated 09.06.1972 and 04.07.1975 are not binding on his share and claims for decree of possession so also perpetual injunction against defendant nos.10/1 to 10/3 and 11 from alienating and creating third party interest in the suit property.

3. The plaintiff contends that Survey No.3 admeasuring 33 acres was owned by Gopalsinh Ramsinh Sayal to the extent of 16 acres 20 gunthas. The plaintiff's father Naroba, uncles Purbha and Pandurang were owners of remaining 16 acres 20 gunthas to the extent of 5 acres 20 gunthas each. Gopalsinh had leased out his land to plaintiff's father i.e. Naroba. As such, Naroba was holding 22 acres area from Survey No.3. On 06.09.1967, Naroba expired. However, on 14.06.1968, his brothers Pandurang and Purbha joining hands with Revenue Officers, shown partition of suit land amongst brothers and got mutated their names along with name of plaintiff's brother Sambha in the revenue record. Later on, they executed sale deed dated 09.06.1972 of 4 acres land in favour of T. Rajendra and sale deed dated 04.07.1975 of 12 acres 20 R land in name of Bhaskar Wattamwar.

4. According to plaintiff, aforesaid transactions took place during pendency of Special Civil Suit No.63/1971 (renumbered as Regular Civil Suit No.988/2000) instituted by Tuljaram Rathor and Hirasing Anantramsing, claiming ownership and possession over suit property against present plaintiff, his brother Sambha and

uncles Purbha and Pandurang in respect of suit property. Since plaintiff was minor at the time of institution of suit of the year 1971, he was shown as defendant no.5 under guardianship of his stepmother namely Tanyabai. Ultimately, aforesaid suit was compromised by Bhaskar Wattamwar (purchaser under sale deed dated 04.07.1975) with Tuljaram and another. Eventually, said suit came to be dismissed for want of prosecution. According to plaintiff, after dismissal of aforesaid suit, he got cause of action to file present suit seeking relief as claimed.

5. The defendant nos.10/1 to 10/3 caused appearances in suit and filed respective applications seeking rejection of plaint under Order VII Rule 11 of Code of Civil Procedure, contending that suit does not disclose cause of action. The reliefs claimed in suit are hopelessly barred by law of limitation. The suit is inadequately valued. The plaintiff has no right in suit property. The cause of action as pleaded in suit is illusory and camouflage.

6. The Trial Court after considering rival contentions, rejected applications observing that point of limitation is mixed question of facts and law, plaintiff has appropriately pleaded cause of action dated 13.12.2021 as dismissal of Regular Civil Suit No.988/2000 involving suit property. Similarly, valuation as made in suit is correct.

7. Aggrieved defendants filed present Civil Revision Applications assailing order of Trial Court.

8. Mr. Bajaj, learned Advocate appearing for applicants would urge that Trial Court failed to exercise jurisdiction vested with him under Order VII Rule 11 of Code of Civil Procedure in accordance with law. Mr. Bajaj would submit that plaintiff has instituted suit assailing alienation of suit land made in the year 1972 and 1795 under registered sale deeds. The plaintiff had every knowledge of sale deeds or transfer of lands hence suit instituted after 46 years is hopelessly barred by limitation. Mr. Bajaj would submit that cause of action for filing suit is fictitious, imaginary and unconcerned with main relief claimed in suit. According to him, pendency of Regular Civil Suit No.988/2000 or its dismissal in the year 2021 is absolutely irrelevant and cannot constitute cause of action to file present suit for reliefs claimed. According to Mr. Bajaj, Trial Court has erroneously observed that question of limitation is mixed question of law and facts, when careful reading of plaint depicts that suit is manifestly barred by limitation. In support of his contentions he relies upon series of supreme court judgments right from T. Arivandandam delivered in 1977 till Ramisetty Venkatanna delivered in the year 2022, wherein law on the point of jurisdiction under Order VII Rule 11 of Code of Civil Procedure has been elaborated and explained.

9. Per contra, Mr. Katneshwarkar, learned Senior Advocate appearing for respondent/plaintiff supports impugned order. He would urge minor plaintiff was added as defendant no.5 in Regular Civil Suit No.988/2000 under guardianship of his step mother. The issue as to the ownership and possession of self same suit property was subject matter of that suit. The plaintiff could not have instituted independent suit raising his claim as to the title in wake of pending litigation in respect of self-same properties. He would, therefore, urge that dismissal of Regular Civil Suit No.988/2000 has been rightly pleaded as cause of action. According to Mr. Katneshwarkar, Trial Court has rightly considered aforesaid aspects and held that issue of limitation is mixed question of law and facts in present case and can be decided only at the conclusion of trial.

10. Having considered submissions advanced, two aspects are posed for consideration before this Court. Firstly, whether on careful reading of plaint, plaintiff has made out case depicting right over suit property and has genuine cause of action for institution of present suit. Secondly, whether suit seeking declaration in respect of sale deeds executed in the years 1972 and 1975 is within limitation on the basis of averments made in plaint in conjunction with documents relied upon.

11. Careful analysis of averments in plaint depicts that plaintiff is claiming his title over suit property through his father Naroba. Admittedly, Naroba expired on 06.09.1967. Thereafter, names of plaintiff's uncles namely Pandurang and Purbha and his brother Sambha were mutated in Record of Rights vide Mutation Entry No.48 dated 16.06.1968. In the year 1971 Tuljaram Rathor and another instituted suit for recovery of possession of land Survey No.3 to the extent of half portion i.e. 16 acres 20 gunthas known as Pandikadcha-hissa against Pandurang, Purbha, Sambha, Shankar (plaintiff himself) and his stepmother Tanyabai. However, during pendency of that suit plaintiff's uncles and his brother Sambha executed sale deeds dated 09.06.1972 and 04.07.1975 in favour of T. Rajendra and Bhaskar Wattamwar respectively and alienated 16 acres 20 gunthas land to those purchasers.

12. In Special Civil Suit No.63/1971 (new Regular Civil Suit No.988/2000) instituted by Tuljaram Rathor and another, minor plaintiff was shown aged about 10 years under guardianship of his stepmother Tanyabai. In present suit plaintiff shown his age as 62 years. Therefore, it can be safely gathered that plaintiff attained majority in year 1978. If plaintiff was aggrieved by sale deeds of 1972 and 1975, it was open for him to set out his claim and seek

declaration that those sale deeds were not binding on his rights or those are invalid.

13. Looking to the age of plaintiff, right to assail sale deeds on the ground of infringement or exclusion of his right occurred to him on attaining majority. Article Article 58 of the Limitation Act prescribes period of three years seeking declaration from date when right to sue accrues. Therefore, assuming that plaintiff attained majority in the year 1978, suit could have been instituted before 1981. Even assuming that Article 110 of Limitation Act applies in present case as plaintiff was excluded from suit property on the date of execution of sale deeds, limitation of 12 years is provided to seek relief of partition. Therefore assuming period of 12 years from the date when plaintiff attained majority, suit ought to have instituted before 1990. At this stage it is appropriate to refer certain observations of this Court in case of ***Chhabubhai Balkrishna Sutar and another Vs. Panchan Ladha Savala and others***¹, which reads are as under:

“Thus, it is evident that the Suit has been filed for cancellation of the Sale Deeds of 1947. This would obviously mean that the Suit is barred by limitation. Both the trial Court and the Appellate Court have correctly held that the plaintiffs were not entitled for a declaration cancelling the Sale Deeds of 1947. Faced with this difficulty, the learned Advocate for the plaintiffs has submitted, on instructions, that the plaintiffs do not desire to press prayers (b), (b-1) and (d) at this stage and are confining the reliefs claimed in the Suit only to prayers (a) and (c). This means that the plaintiffs are today

¹ 2010 (5) Mh.L.J. 885.

seeking a declaration that they have a 1/3rd undivided share in the suit property and that they are entitled to partition and separate possession of this 1/3rd undivided share.

17. Even assuming the Suit is confined only to the aforesaid prayers, it would still be hit by limitation. Under Article 110 of the Limitation Act, a person who is excluded from a share in a joint family property must file a Suit within 12 years from the exclusion. The witness for the plaintiffs has deposed that the plaintiffs were ousted from the suit property in 1954. Therefore, it was necessary for the plaintiffs to file the Suit within 12 years from their ouster from the suit property. Admittedly, this has not been done.

14. In present case plaintiff was well aware about alienation of suit property by his brother Sambha, uncles Purba and Pandu under registered sale deeds executed in year 1972-75 excluding his right. Hence plaintiff could have filed suit for partition of joint family property within period of 12 years prescribed under Art 110 of limitation Act. Plaintiff attained majority in year 1978 hence assuming extension till extinguishing of disability, limitation to raise challenge expired in year 1990. Present suit is filed in year 2022 would be barred by limitation.

15. The plaintiff contends that Regular Civil Suit No.988/2000 (old Special Civil Suit No.63/1971) pertaining to suit property was pending, hence, he got cause of action to file present suit on its dismissal vide order dated 13.12.2021. Apparently, as per averments in plaint it is contention of plaintiff that Tuljaram Rathor and another instituted suit for recovery of possession. They

were trying to set up their independent title over suit property. However, during pendency of that suit, when suit property was alienated by plaintiff's uncles and brother under registered sale deeds of 1972 and 1975 executed in favour of T. Rajendra and Bhaskar Wattamwar respectively there was no impediment to plaintiff to assert his own right claiming that those sale deeds are invalid or not binding on his right. It is difficult to hold that pendency of Tuljaram's suit precluded plaintiff from asserting his own right and infringement thereof and seek declaration to that effect. The dismissal of suit instituted by Tuljaram in the year 2021 is absolutely irrelevant to constitute cause of action in favour of plaintiff to seek declaration against infringement of his right on account of execution of sale deeds of the years 1972 and 1975. It is not case of plaintiff that he was not aware about sale deeds and consequential transfer of rights in favour of T. Rajendra and Bhaskar Wattamwar. Therefore, this court holds that cause of action pleaded by plaintiff is illusory and product of clever drafting.

16. In case of ***T. Arivandandam Vs. T. V. Satyapal and Another***², particularly in paragraph no.5, Supreme Court observed as under:

“The learned Munsif must remember that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Or. VII r. 1 C.P.C. taking care to see that the

² (1977) 4 SCC 467.

ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist Judge is the answer to irresponsible law suits.”

17. The aforesaid exposition of law clearly puts obligation on Trial Court to record satisfaction as to right of plaintiff to sue and also keep in mind that clever drafting may create illusory cause of action which shall be searchingly examined and in appropriate cases powers under Order VII Rule 11 of Code of Civil Procedure shall be exercised. In present case, impugned order suggests that Trial Court failed to cautiously apply his mind to averments in plaint to search genuineness of cause of action or its relevancy for claim in suit and got trapped in camouflage.

18. So far as aspect of limitation is concerned, Trial Court observed that this would be mixed question of law and facts and cannot be considered at this stage. It is well settled that while considering application under Order VII Rule 11 of Code of Civil Procedure, contents of plaint and documents appended thereto are relevant and it is duty of the Court to find out clear right to sue and limitation. If, on the basis of averments in plaint, it is manifest that suit is barred by limitation, Court need not protract decision on issue of limitation for trial. In present case, plaintiff is claiming his right in the suit properties, which are alienated in years 1972 and 1975. The plaintiff attained majority in the year

1978 and was aware about aforesaid transactions in exclusion of his alleged right. In this background, plaintiff has no explanation for 43 years delay to assail infringement of his right. In this case none of the provision extending period of limitation can be resorted by plaintiff. It is trite that, even in case of disability, extension of three years from date of extinguishing disability is provided to challenge action of infringement of right. However, such extension of limitation of three years was also expired in present case long back in the year 1981 and even for relief of partition 12 years period of limitation expired in the year 1990.

19. In case of ***Raghwendra Sharan Singh Vs. Ram Prasanna Singh and Others***³, Supreme Court observed in paragraph no.9 as under:

“Now, so far as the application on behalf of the original plaintiff and even the observations made by the learned trial Court as well as the High Court that the question with respect to the limitation is a mixed question of law and facts, which can be decided only after the parties lead the evidence is concerned, as observed and held by this Court in the cases of Sham Lal alias Kuldip (supra); N.V. Srinivas Murthy (supra) as well as in the case of Ram Prakash Gupta (supra), considering the averments in the plaint if it is found that the suit is clearly barred by law of limitation, the same can be rejected in exercise of powers under Order 7 Rule 11(d) of the CPC.”

20. Similarly, in case of ***Dahiben Vs. Arvinbhai Kalyani Bhanusali (Gajra) and Others***⁴, in paragraph no.23.3, Supreme

Court observed as under:

³ (2020) 16 SCC 601.

⁴ (2020) 7 SCC 366.

“The underlying object of Order VII Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.”

21. The Supreme Court in case of ***Azhar Hussain V. Rajiv***

Ghandhi⁵ observed in paragraph no.12 as under:

“12. ...The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even if an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action.” 12.2 The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to. ”

22. In light of aforesaid exposition of law, observations of Trial Court that issue of limitation cannot be decided at preliminary stage in application under Order VII Rule 11 of Code of Civil Procedure cannot be countenanced. In view of aforesaid facts and circumstances, this Court holds that plaint is liable to be rejected since it sans cause of action and barred by limitation. Hence, following order:

ORDER

a. Civil Revision Applications are allowed.

⁵ AIR 1986 SC 1253.

- b. The impugned order dated 19.12.2022 passed below Exhibits 68 and 55 respectively in Regular Civil Suit No.106/2022 pending before Civil Judge Junior Division at Nanded is quashed and set aside.
- c. The applications under Order VII Rule 11 of the Code of Civil Procedure filed below Exhibits 68 and 55 are allowed.
- d. The plaint in Regular Civil Suit No.106/2022 stands rejected.
- e. In view of disposal of Civil Revision Applications, pending Civil Applications stand disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/May-2025