



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

CIVIL REVISION APPLICATION NO. 55 OF 2025

Ashok Daulat Landge .. Applicant

Versus

Rajendra Damu Landge and others .. Respondents

Shri K. N. Shermale, Advocate for the Applicant.

Shri V. V. Tarde, Advocate for the Respondent No. 1.

Shri A. B. Jagtap, Advocate for the Respondent No. 19.

Shri A. N. Nagargoje, Advocate for the Respondent No. 22.

CORAM : SHAILESH P. BRAHME, J.

DATE : 02ND DECEMBER, 2025.

FINAL ORDER :

. Heard both sides finally at the admission stage.

2. Applicant – original defendant No. 1 has assailed order dated 15.02.2025 rejecting his application Exhibit 75 preferred under Order VII Rule 11 of the Code of Civil Procedure (for the sake of brevity and convenience hereinafter referred as to the “C.P.C.”). The respondent No. 1 is the original plaintiff in R.C.S. No. 1100 of 2022.

3. Applicant and the respondents are related interese. The genealogy is reflected from para No. 2 of the plaint. R.C.S. No. 1100 of 2022 has been filed for partition, declaration that decree passed in R.C.S. No. 107 of 2004 is not binding and injunction.

The subject matter is land gut Nos. 102, 255, 103, 10 and 113 as described in para No. 1 of the plaint.

4. Application Exhibit 75 was filed by applicant and other defendants contending that the cause of action was illusory. The suit is hit by Sec. 11 of the C. P. C. It is barred by limitation and it is barred by Order XXIII Rule 3A of the C. P. C. It is stated that in earlier round of litigation R.C.S. No. 107 of 2004 was preferred by the applicant for partition against the respondent No. 1 and others in respect of land gut No. 10 and 113. It was decreed on 30.11.2006. Being aggrieved R.C.A. No. 70 of 2014 was preferred by Tanhabai Eknath Mirpagar i. e. present defendant No. 22. It was dismissed on 29.03.2018. Being aggrieved Second Appeal No. 99 of 2024 was filed and dismissed on 29.01.2025. The parties are stated to have suffered the adjudication for the self same claim.

5. Learned counsel Mr. Shermale for the applicant submits that decree dated 30.11.2006 passed in R.C.S. No. 107 of 2004 has been questioned by filing present suit on 06.10.2022 (registered on 20.10.2022), which is barred by Article 59 of the Limitation Act. It is submitted that the cause of action is illusory and vexatious. A proxy suit is being filed at the instance of unsuccessful litigants in the earlier round of litigation. It is submitted that the cause of action is shown to be that of 10.07.2022, which is barred by time. It is submitted that suit is hit by Sec. 11 of the C. P. C. considering the parties, subject

matter, issues and the claim in the present suit as well as previous suit. The respondent No. 1 could have challenged the decree passed in R.C.S. No. 107 of 2004, but he preferred to remain content which estopped him from filing present suit. It is further submitted that decree passed in R.C.S. No. 107 of 2004 was confirmed upto High Court in Second Appeal No. 99 of 2024. Hence declaration sought is defective.

6. Learned counsel Mr. Tarde for the respondent No. 1 supports impugned order. It is submitted that the cause of action, parties, subject matter and reliefs are different. The sisters were not party in earlier round of litigation. In the present suit vital material of the consolidation scheme which was not available earlier is required to be gone into. It is contended that mixed question of law and facts are involved for which full fledged trial is required.

7. Learned counsel Mr. Ankush Nagargoje appearing for the respondent No. 22 adopts the submissions of the respondent No. 1. Additionally, it is submitted that the legal heirs of the deceased sisters Hausabai and Sulabai are defendants in the present suit. R.C.S. No. 473 of 2025 was filed by the legal representatives of Hausabai. Application Exhibit 35 was filed U/O VII Rule 11 of the C. P. C. in that suit, which was also rejected. Being aggrieved C. R. A. No. 208 of 2025 has been filed in this Court. It is further submitted that if the suit is decreed then applicant, the defendant No. 1 and the sisters would be

entitled to 1/4th share. It is submitted that pleadings and the material placed on record needs independent scrutiny after full fledged trial.

8. I have considered rival submissions of the parties. The genealogy which is mentioned in para No. 2 of the plaint has not been disputed. In earlier suit subject matter was land gut Nos. 10 and 113 only, whereas in the present suit in all five lands are subject matter. R.C.S. No. 107 of 2004 filed by the applicant's father for partition was contested on merits by the respondent No. 1 taking specific plea that suit lands were allotted to Damu and father of the respondent No. 1. A partition had taken place during lifetime of their father and gut Nos. 102, 103 and 255 were allotted to plaintiffs therein (applicant's father). Pertinently, the purchaser Tahnabai Eknath Mirpagar was defendant No. 6 in the suit and is the contesting defendant No. 6 in the suit.

9. Following issues were formulated in earlier suit :

1. Does plaintiff prove that the suit properties are joint family properties of parties?
2. Do defendants prove that the suit properties are already partitioned?
3. Whether the suit is bad for not bringing all the joint family properties into hotch-pot?
4. Do defendant nos.6 & 7 prove that they are bonafide purchasers of the suit properties?

5. Is plaintiff entitled to get partitioned the suit properties ? If yes, what would be the respective share of parties?
6. Whether plaintiff is entitled for declaration as prayed by him?
7. Do defendant nos. 1, 2, & 7 prove that the suit is false and vexatious to the knowledge of plaintiff?
8. What order and decree?

10. Considering the evidence on record, following findings are recorded by the Trial Court :

“9. Moreover, it is contended by the deft. No. 1 & 22 that lands bearing G. nos. 102, 103 and 255 were given in the partition to the present plaintiff. However, plaintiff filed the certified copies of mutation entry nos. 382, 772, 381, 895, 2963, 3035 and 4115 at exh. 68, 70, 72, 73, 76, 77 & 78 respectively. From these mutation entries, it becomes clear that lands bearing Gat No. 102, 103 and 255 are self-acquired properties of the plaintiff and those properties cannot be treated as joint family property of parties.

Thus, in view of above discussion, I came to the conclusion that plaintiff proved beyond reasonable doubt that suit properties are ancestral and joint family properties of parties. I also come to the conclusion that defendants could not prove the burden of issue nos. 2 & 3. Hence I record my findings in the affirmative to the issue no. 1 and in the negative to the issue nos. 2 & 3.”

11. The suit was decreed on 30.11.2006 in following terms :

ORDER

1. Suit is decreed with costs.
2. The plaintiff is entitled for half (1/2) share in the suit properties.
3. The sale-deeds dated 25.10.90 and 7.1.2004 executed by defendant nos. 1 to 5 in favour of defendant nos. 6 & 7, are not binding on the plaintiff.
4. The defendants no. 6 & 7 are entitled to avail the legal remedy against the defendants no.1 to 5.
5. The precept under Sec. 54 of Civil Procedure Code be sent to the Collector, Ahmednagar, for effecting partition and possession of ½ share of the plaintiff.
6. Preliminary decree be drawn accordingly.

12. Being aggrieved by the decree, the defendant No. 6 therein, Tanhabai had preferred R.C.A. No. 70 of 2014. The respondent No. 1, who was contesting party preferred to remain silent. Neither the findings, nor the decree was challenged by him. Appeal was dismissed on 29.03.2018. The decree is confirmed in Second Appeal No. 99 of 2024 vide order dated 29.01.2025. Following observations made by the High Court are relevant.

“5. Considering the case sought to be made out by Plaintiffs and Defendants, initial burden was on the Plaintiffs to substantiate their case. Plaintiff stepped into witness box and claimed that there was no previous partition. The onus, therefore, shifted on Defendant Nos. 1 to 5 to prove the theory of previous partition. Admittedly, Defendant Nos. 1 and 2 who filed written statement, did not lead any evidence. The Trial Court decreed the suit. Plaintiffs were granted

half share in the suit properties. It is however declared that the sale deed executed in favour of Defendant Nos. 6 and 7 are not binding on the plaintiffs. Learned First Appellate Court confirmed the said judgment and decree.”

13. It is concluded that the defendants therein failed to discharge the burden. The respondent No. 1 suffered the decree passed by the Courts upto High Court. Its a matter of record that decree passed in earlier round of is put to execution in R. D. No. 02 of 2014. The respondent No. 1 participated in the proceedings. He is estopped from contended that he was not aware of the decree.

14. The pleadings in para No. 6 of the plaint that the decision in R.C.S. No. 107 of 2004 was obtained behind his back, fraudulently and it was learnt for the first time on 10.07.2022, is palpably false.

15. Neither the respondent No. 1, nor the respondent No. 22, who was appellant in earlier round of litigation pleaded and proved that decree passed in R.C.S. No. 107 of 2004 was without extending an opportunity and obtained by fraud or obtained by keeping them in dark. The meaningful reading of para Nos. 6 to 9 of the plaint disclose that the cause of action is illusory, vexatious and designed to overcome decree passed in R.C.S. No. 107 of 2004, which was confirmed upto High Court. I have no hesitation to hold that the cause of action is outcome of cleaver drafting and an illusion. It is a proxy suit filed at the instance of

the purchasers, who were unsuccessful in earlier round of litigation.

16. The decree passed in R.C.S. No. 107 of 2004 on 30.11.2006 was confirmed upto High Court vide order dated 29.01.2025. The relief in present suit is in respect of the decree passed in R.C.S. No. 107 of 2004. Unless order passed by the High Court in Second Appeal No. 99 of 2024 is quashed by the competent forum, such a relief cannot be granted. The limitation as per Article 59 of the Limitation Act is of three years. The respondent No. 1 was party to earlier suit and he was aware of decree. The suit is hopelessly barred by limitation.

17. Though the subject matter of the present suit and the earlier suit are not identical, gut No. 10 and 113 are common. Due to the plea raised in the written statement in the earlier round of litigation, the observations were made in respect of gut Nos. 102, 255 and 103. Those are invited by the respondent No. 1. Considering the issues involved, the parties, confirmation of decree upto High Court, present case is squarely covered by Sec. 11 of the C. P. C. Though the parties are marginally different, they are litigating on the same claim. By implication of explanation IV, the respondent No. 1 is estopped from bringing the present suit. In peculiar facts and circumstances no further inquiry is required to examine as to whether Sec. 11 of the C. P. C. is applicable or not.

18. Reliance is placed by the respondents on the **judgment dated 23.10.2023 of the Coordinate Bench in the case of Rajesh Laxman Titme and others Vs. Sunil Sudam Awari and others in C. R. A. No. 179 of 2017**, which *inter alia* referred to the **Order dated 12.09.2023 of the Supreme Court in the matter of Keshav Sood Vs. Kirti Pradeep Sood and others in Civil Appeal No. 5841 of 2023** to bolster that issue of *res-judicata* cannot be dealt with U/O VII Rule 11 of the C. P. C. I have also gone through the order of the Supreme Court in the matter of Keshav Sood Vs. Kirti Pradeep Sood (*supra*). In the matter before the Supreme Court, apart from the pleadings of the earlier suit, several other documents were also relied. Those were produced by the defendants which were held to be outside of the purview of Order VII Rule 11 of the C. P. C. In that context, it was recorded that issue of *res-judicata* cannot be decided on an application U/O VII Rule 11 of the C. P. C. The case in hand shows that the pleadings and the judgment rendered in earlier round of litigation are undisputed. The applicant has not independently pressed into service any document. Hence no benefit of the judgment can be given to the respondents.

19. Pertinently, the respondent No. 22 – Tanhabai did not object application Exhibit 75 preferred by the applicant. She is the purchaser. She was party in the earlier round of litigation. More particularly, appeal before the District Court and High Court were preferred by herself, which were dismissed. It is

incomprehensible as to why she did not raise plea of non joinder of necessary party. Her contest in the present matter shows collusion between the respondent No. 1 and other defendants. I have no iota of doubt that present suit is proxy one.

20. In the present case the cause of action is recorded to be vexatious and the suit is proxy one. Hence *res-judicata* is not the only ground on which rejection of plaint is solicited. The scope of the inquiry U/O VII Rule 11 of the C. P. C. has been explained by the Supreme Court in number of judgments. Some of such judgments are in the matter of Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal reported in (2017) 13 SCC 174, Dahiben Vs. Arvinbhai Kalyanji Bhanusali reported in (2020) 7 SCC 366 and Rajendra Bajoriya Vs. Hemant Kumar Jalan and others reported in (2022) 12 SCC 641.

21. The Trial Court committed perversity in holding that questions of law and fact are involved requiring full fledged trial. The grounds pressed into service vide application Exhibit 75 U/O VII Rule 11 of the C. P. C. are based on admitted facts and discerned from the plaint and the documents annexed thereto. It would be abuse of process of law to proceed with the suit.

22. For the foregoing reasons I pass following order.

O R D E R

A. The Civil Revision Application is allowed.

B. Impugned order dated 15.02.2025 passed by 03rd Joint Civil Judge Junior Division, Newasa below Exhibit 75 in R.C.S. No. 1100 of 2022 is quashed and set aside and plaint in R.C.S. No. 1100 of 2022 shall stand rejected.

[SHAILESH P. BRAHME J.]

bsb/Dec. 25