



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

CIVIL REVISION APPLICATION NO.113 OF 2024

Deepak S/o. Gahina More,
Age- 41 Years, Occu- Service,
R/o. Wadzire, Tal-Parner, Dist- Ahmednagar.

..(Ori. Defendant No.8)
Revision Applicant

Versus

1. Dashrath Bapu Kedare
Since deceased through his legal representatives-

1-A) Rajesh S/o. Dashrath Kedare,
Age- 48 Years, Occu- Agriculture,
R/o. Vadner, Tal-Parner, Dist- Ahmednagar.

1-B) Santosh S/o. Dashrath Kedare,
Age-40 Years, Occu- Agriculture,
R/o. Vadner, Tal-Parner, Dist- Ahmednagar.

1-C) Kalpana Bhagwan Jadhav,
Age- 50 Years, Occu-Household,
R/o. Yogitham, Kalyan, Tal-Kalyan, Dist-Thane.

1-D) Sangita Gautam Gaikwad,
Age- 52 Years, Occu- Agriculture,
R/o. Vadner, Tal-Parner, Dist- Ahmednagar.

...(Original Plaintiff)

02. Nandkumar S/o. Tukaram Kedare,
Age-70 Years, Occu- Agriculture,
R/o. Vadner, Tal-Parner, Dist- Ahmednagar.

03. Ajay S/o. Nivrutti Kedare,
Age-45 Years, Occu- Agriculture,
R/o. Vadner, Tal- Parner, Dist-/Ahmednagar.

04. Shobha D/o. Nivrutti Kedare,
Age- 43 Years, Occu- Agriculture,
R/o. Vadner, Tal- Parner, Dist- Ahmednagar.

05. Shilpa D/o. Nivrutti Kedare,
Age- 41 Years, Occu- Agriculture,
R/o. Vadner, Tal- Parner, Dist- Ahmednagar.

06. Laxmi Wd/o. Nivrutti Kedare,
Age- 70 years, Occu- Agriculture,

R/o. Vadner, Tal- Parner, Dist- Ahmednagar.

07. Samsheer S/o. Shabbir Sayyed,
Age- 48 years, Occu- Agriculture,
R/o. Survey No. 35/1-2, Plot No. 14, Flat No. 5,
Chandanshifalika Road No.6, Oppo.
Ganesh Mandir, Tingare Nagar,
S.L.F. Station, Pune-411032.

08. Sardar S/o. Mohammad Pathan,
Age- 56 years, Occu- Agriculture,
R/o. Supa, Tal-Parner, Dist-Ahmednagar.

..(Orig. Defendant Nos.1 to 7)
Respondents.

...

Mr. A. R. Devkate h/f Mr. S. P. Salgar, Advocate for Applicant.

Mr. M. P. Kale h/f Mr. N. R. Muley, Advocate for Respondent
Nos.1A and 1B.

Mr. N. N. Bhagwat, Advocate for Respondent Nos.1C and 1D.

...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 27th JANUARY, 2025.

PRONOUNCE ON : 12th FEBRUARY, 2025.

ORDER:-

1. The applicant/original defendant no.8 approached this Court under Section 115 of the Code of Civil Procedure, thereby impugning order dated 24.11.2023 passed below Exhibit-61 in Regular Civil Suit No.670/2013 pending before Civil Judge, Junior Division, Parner, Dist. Ahmednagar, by which application seeking rejection of plaint under Order VII Rule 11 has been rejected. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The respondent no.1 instituted Regular Civil Suit No.670/2013 before the Civil Judge Junior Division at Parner

generally for following relief:

- (a) To declare that plaintiff is entitled to purchase suit land under right of preemption.
 - (b) To declare that sale deed dated 30.04.2014 executed by defendant nos.1 to 5 in favour of defendant nos.6 and 7 as null and void and defendant nos.6 and 7 have no right in respect of suit property.
 - (c) Defendant nos.6 and 7 or their agents or attorney or any third person claiming through them be perpetually restrained from interfering in peaceful possession and cultivation of plaintiff.
 - (d) The application for temporary injunction against defendants annexed to the plaint be granted.
 - (e) To declare that sale deed executed by defendant nos.6 and 7 in favour of defendant no.8 is invalid.
 - (f) Pending hearing and disposal of suit on merit defendants be restrained from alienating or creating third party interest or from causing obstruction to peaceful possession and cultivation of plaintiff.
3. The plaintiff contends that suit land was purchased by his father namely Bapu Babaji Kedare from one Gangadhar Khisti.

Thereafter, his father sold portion of 6 acres 36 R land in favour of father of defendant no.1 i.e. Tukaram Nabaji Kedare under registered sale deed. However, father of defendants resided away from village, hence, he never occupied possession of the land in pursuance to the sale deed. The land continued in possession of plaintiff. The mutation entries entered in the name of father of defendants and thereafter, defendants were nominal. The suit land is originally belonging to plaintiff's family and he is co-sharer. The defendant nos.2 to 5 are residing away from village, but on the basis of mutation entries, they were intending to sell the land. The plaintiff requested them to transfer the land in his favor and expressed his willingness to purchase it. However, Defendant No.1 declined his request and is disturbing the plaintiff's peaceful possession. The plaintiff is continuously possessing suit land since before sale deed in the name of father of defendants. In pursuance to the order passed by Naib Tahsildar, Parner in Case No.09/2005 name of plaintiff is entered as possessor in 7/12 extract. Since plaintiff is in settled possession, the defendants have no right to dispossess him without following due process of law. Even they are no entitled to legally transfer the land in favour of third person and part with the possession.

4. The plaintiff asserts that since originally land belongs to his family and he is continuously in possession, he has right of

preemption to purchase the land as per current market rate. Therefore, he seeks declaration to that effect. The plaintiff asserted that cause of action arose on 15.09.2013.

5. It appears that, during the pendency of suit, defendant nos.1 to 5 transferred 1/3rd share from Southern side in favour of defendant nos.6 and 7 vide registered sale deed dated 30.04.2014. Thereafter, defendant nos.6 and 7 transferred land in favour of defendant no.8 vide registered sale deed dated 02.06.2022. The plaintiff brought on record aforesaid subsequent events through amendment and inserted prayers to declare those sale deeds as null and void and not binding on him and also inserted prayer to seek perpetual injunction against defendant nos.6 and 7 or their agents.

6. The defendants appeared in the suit and filed written statement. The present applicant, who is subsequently added as defendant no.8 in suit filed his written statement dated 04.08.2023. He filed an application below Exhibit-61 seeking rejection of plaint under Order VII Rule 11 of Code of Civil Procedure, contending that plaintiff's suit is barred by limitation and sans cause of action. According to him, cause of action shown is illusory and suit is filed strategically to prolonge litigation. The Trial Court after hearing parties, rejected application vide order dated 24.11.2023.

7. Mr. Devkate, learned Advocate appearing for the applicant submits that right of preemption has been stipulated under Section 22 of the Hindu Succession Act, 1956 and same would be available only to Class-I heirs of intestate. He would further submit that co-sharer is not conferred with any such right on the basis of vicinage. He submits that father of plaintiff had alienated the suit property in the year 1966 in favour of father of defendant no.1. Therefore, defendants hold absolute right to transfer the land. The sale deed executed by plaintiff's father is not in dispute. He would further submit that previously plaintiff had instituted Regular Civil Suit No.59/2005 against defendant nos.1 to 6 for partition. The suit has been dismissed for want of prosecution on 27.08.2012 and now present suit is filed claiming right of preemption.

8. According to Mr. Devkate, plaintiff has suppressed material facts as to the execution of sale deed by plaintiff's father in favour of Tukaram dated 18.03.1966 as well as fact regarding dismissal of previous suit. Mr. Devkate would further place reliance on Article 97 of the Limitation Act, 1963 to contend that suit seeking right of preemption ought to have been exercised within one year from execution of sale deed in favour of Tukaram dated 18.03.1966. As such, suit filed in the year 2013 is hopelessly barred by limitation, but Trial Court failed to appreciate aforesaid aspect and declined to exercise jurisdiction in tune with legislative intent behind

provision contained under Order VII Rule 11 of the Code of Civil Procedure. In support of his contentions he relies upon judgments of the Supreme Court of India in case of ***Bhau Ram Vs. Baij Nath Singh and Ors.***¹ and ***A. Razzaque Sajansaheb Bhagwan and Ors. Vs. Ibrahim Haji Mohammed Husain***² to contend that right of preemption as claimed would not be available to the plaintiff and suit is barred by limitation.

9. Per contra, Mr. Kale and Mr. Bhagwat, learned Advocates appearing for the respondents endeavour to contend that right of preemption is also available to co-sharer of survey number. The plaintiffs are actually in possession of suit property, although sale deed was executed by plaintiffs' father in favour of father of defendants. The plaintiffs cannot be dispossessed without following due process of law. Accordingly, they support the impugned order. In support of their contentions, they rely upon judgment of the Supreme Court of India in cases of ***Sajjan Singh Vs. Jasvir Kaur and Ors. (Civil Appeal No.4221/2023*** dated ***06.07.2023***), ***Srihari Hanumandas Totala Vs. Hemand Vithal Kamat and Ors.***³, ***Krishna Minor Through His Father and Guardian Vs. State of Haryana***⁴ and ***Bhoop Alleged So of Sheo Vs. Matadin Bhardwaj***⁵.

¹ AIR 1962 SC 1476.

² (1998) 8 SCC 83.

³ (2021) 9 SCC 99.

⁴ 1994 (4) SCC 703.

⁵ 1991 (2) SCC 128.

10. Having considered submissions advanced by the learned Advocate appearing for the respective parties and on perusal of plaint and material tendered before this Court, it is apparent that applicant is seeking rejection of the plaint on the ground of limitation and cause of action. Order VII Rule 11 of the Code of Civil Procedure prescribes that plaint shall be rejected where it does not disclose cause of action or where appears from the statement of plaint to be barred by law.

11. The parameters of jurisdiction to exercise powers under Order VII Rule 11 have been explained by the Supreme Court of India. It is trite that, decision as to the rejection of the plaint has to be based on statement in the plaint only. The Court is not expected to look into the defence put forth in the written statement and it is open to decide the issue on the basis of any other material that has been put on record by way of defence. It is further explained that documents presented alongwith plaint can be considered for forming opinion on the issue.

12. In view of the aforesaid legal position, perusal of the plaint in Regular Civil Suit No.670/2013 suggests that cause of action to file suit is shown on 15.09.2013, when defendants obstructed alleged possession of the plaintiff over the suit property. The plaintiff asserts that although his father executed sale deed in favour of

Tukaram i.e. father of defendant no.1, possession was never handed over and suit property remained in his possession continuously without obstruction. The plaintiff claims that defendants have no right to disturb his possession without following due process of law, since he is in settled possession. The plaintiff, therefore, seeks relief of perpetual injunction against defendant nos.6 and 7.

13. In this background, it is apparent that, apart from seeking relief for the declaration as to right of preemption, the plaintiff is independently claiming relief for a perpetual injunction. Therefore, assuming that the plaintiff has no cause of action to claim relief for the declaration as to right of preemption concerning the suit property under Section 22 of the Hindu Succession Act, a finding regarding the assertion of possession needs to be recorded during the trial.

14. Apparently, suit of the plaintiff cannot be rejected for want of cause of action atleast for relief of perpetual injunction. It is well-established that a plaint cannot be rejected in part. When plaintiff claims multiple reliefs, even if he may not be entitled to or lacks a cause of action for some of reliefs claimed, once it is found that the plaintiff can pursue his remedy for at least one of the claimed reliefs, there is no justification for entertaining an application under Order VII Rule 11 of the Code of Civil Procedure.

15. Consequently, no case is made out to cause interference in the impugned order. Civil Revision Application sans merit, hence, rejected.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/February-2025