



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

CIVIL REVISION APPLICATION NO. 81 OF 2024

Satyabhamabai Ghaginath Nikam

and another

.. Applicants

Versus

Anna Laxman Nikam

.. Respondent

Mrs. Pooja V. Langhe, Advocate h/f Shri Vijay R. Langhe,
Advocate for the Applicants.

Shri M. B. Humane, Advocate for the Respondent.

CORAM : SHAILESH P. BRAHME, J.

DATE : 19TH DECEMBER, 2025.

FINAL ORDER :

. Heard both sides.

2. Present revision is directed against order dated 27.11.2023 passed below Exhibit 10 in R.C.S. No. 499 of 2022 rejecting application preferred by the defendants 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.”).

3. Learned counsel for the applicants submits that the reliefs claimed are clearly barred by Sec. 158 of the Maharashtra Land Revenue Code, 1960 (for the sake of brevity and convenience hereinafter referred as to the “M. L. C. Code”). The mutation entry is based upon registered sale deed dated 28.07.1983 transferring land from gut No. 176 by the father of the plaintiff to Bhagubai, which has not been challenged in the present suit.

The cause of action is outcome of clever drafting and illusory, hence the plaint is liable to be rejected. It is further submitted that the learned Judge committed error of jurisdiction in passing cryptic order without considering all the grounds pressed into service by the applicants. It is further submitted that mutation entry was effected on or about 20.05.1996, which is sought to be challenged after 26 years in the suit of 2022, which is apparently barred by time.

4. Learned counsel for the respondent supports the impugned order. He would submit that Trial Court is justified in holding that its a mixed question of fact and law. He would further submit that a full fledged trial is necessary to arrive at specific conclusion. He would submit that Bhagubai Damse was not related to the family and alienation shown in her favour is apparently illegal. The mutation entry No. 892 is false and need inquiry during full fledged trial. Reliance is placed on the judgment of the Supreme Court in the matter of Chhotaanben and another Vs. Kiritbhai Jalkrushnabhai Thakkar and others reported in *2018(6) SCC 422*.

5. The respondent has filed R.C.S. No. 499 of 2022 on 06.10.2022 for challenging mutation entries in respect of land gut No. 176 sanctioned in favour of the applicants and further seeking negative relief of declaration and injunction of the suit land. The genealogy given in para No. 2(2) of the plaint has not been disputed. In paragraph No. 4, the alienation in respect of gut No. 176 made in favour of Bhagubai Govind Damse, who is

stated to be not related to the parties has been referred to. It is further contended that mutation entry has been effected in pursuance of the alienation in favour of applicants and plaintiff's father Laxman is stated to be the transferrer. The meaningful reading of the plaint reveals that the alienation made by Laxman in favour of Bhagubai Govind Damse has been castigated to be illegal and the mutation entry No. 892 has been effected on 20.05.1996 recording names of heirs of the purchaser Bhagubai Govind @ Muktaji Damse, wherein names of the present applicants – defendants are included.

6. The tenor of the plaint is that Laxman and thereafter his sons plaintiffs are stated to be very naive and taking disadvantage, the suit land is alleged to have been transferred fraudulently. In para No. 6, it has been stated that plaintiff's son Nitin collected information regarding revenue record and the transaction. The cause of action is recorded to have been arisen on 20.03.2022.

7. It is incomprehensible as to how the suit was filed without challenging sale deed dated 28.07.1983 executed by Laxman in favour of Bhagubai Govind @ Muktaji Damse. When the suit land was allotted lawfully or unlawfully, the registered sale deed ought to have been challenged. In all probabilities, to overcome the impediment of law of limitation instead of challenging sale deed only challenge is raised to the mutation entry. The suit challenging mutation is barred by time and, therefore, the relief of challenging mutation entry and negative declaration have

been solicited in the suit. This Court is of the considered view that cause of action is illusory and it is outcome of cleaver drafting.

8. In view of clear cut bar provided U/Sec. 158 of the M. L. R. Code, only the appellate forum under the M. L. R. Code will have jurisdiction to consider validity of the mutation entry. The jurisdiction of the civil court is clearly ousted. The relief of declaration in respect of mutation entry is barred by law.

9. Though it is contended by the respondent that Bhagubai is not related to the family, once the main relief solicited is barred by time and there is clear cut illusory cause of action, the suit appears to be vexatious. Continuation of such a suit would be abuse of process of law. The Trial Court did not take into consideration this aspect of the matter and cursorily passed impugned order observing that question of limitation is mixed question of facts and law. Learned counsel for the applicant is right in contending that the Trial Court has committed error of jurisdiction.

10. Learned counsel for the respondent has referred to the judgment of the Supreme Court in the matter of Chhotaanben and another Vs. Kiritbhai Jalkrushnabhai Thakkar and others (supra). In that case the issue was as to what would be the starting point of limitation when challenge is raised to the registered sale deed. In that context Hon'ble Apex Court expressed a view that it would be mixed question of law and fact and would require

further inquiry during the course of trial. The facts are distinguishable. In the present case no registered sale deed is challenged. On the contrary relief of declaration is beyond the jurisdiction of the Civil Court. The judgment would not enure to the benefit of the respondent.

11. Learned counsel for the applicants relies on the judgment **dated 19.10.2022 of the Supreme Court in the matter of Ishwar and others Vs. Gram Panchayat Parli Khurd in Special Leave to Appeal © No. 11142 of 2020** and order passed by the Coordinate Bench of this Court **dated 03.03.2016 passed in the matter of Santosh Balkrushna Junjunwala Vs. Krushnabai Pandurang Nalavade and another in C. R. A. No. 328 of 2007**, wherein relief of declaration was solicited in respect of mutation entry. The consistent view in both the matters is that challenge to the mutation entry can lie before the revenue authority.

12. For the reasons stated above, the impugned order is unsustainable. The civil revision application is allowed. Impugned order is quashed and set aside. The plaint in R.C.S. No. 499 of 2022 shall stand rejected.

[SHAILESH P. BRAHME J.]