



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRA NO. 102 OF 2025

Shri. Dilip Balkrushna Lahare
Age: 66 years, Occupation: Advocate,
Resident of: Shivaji Housing Society,
Burudgaon road, Taluka Nagar,
District Ahmednagar.

...APPLICANT

VERSUS

1. Smt Aasha Gangadhar Lahare
Age: 69 years, Occupation: Household,
Resident of: Plot No.15, Nayakunagar,
Vadarwadi, Bhingar, Taluka Nagar,
District Ahmednagar.
2. Shri Santosh Gangadhar Lahare
Age: 42 years, Occupation: Service
3. Shri Meher Gangadhar Lahare
Age: 40 years, Occupation: Service
4. Smt Shubhangi Sanjay Chandgude
Age: 46 years, Occupation: Household
5. Smt Suvarna Santosh Kakade
Age: 44 years, Occupation: Service

All Resident of: Plot No. 15, Nayakunagar,
Vadarwadi, Bhingar, Taluka Nagar,
District Ahmednagar

Org. Defendant
Nos.2 to 5
....RESPONDENTS

Shri. Mukul S. Kulkarni, Advocate for Applicant
Shri. S. S. Gangakhedkar, Advocate for Respondents

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CORAM : **SHAILESH P. BRAHME, J.**
DATE : **14.11.2025**

O R D E R :-

1. The present revision is directed against rejection of application under Order 7 Rule 11 of C.P.C. in RCS No.180 of 2024.
2. RCS No.180 of 2024 is filed by respondent no.1 for declaration in respect of the will dated 16.03.1994 and for declaration of ownership. It is contested by the applicant and others on various grounds. The plea of *res judicata* and estoppel in the wake of decision in RCS No.276 of 2000, which was confirmed up to the Supreme Court, the suit is sought to be dismissed. It is contended that Mr. Gangadhar was party to earlier litigation who did not object the will in question.
3. The applicant submitted application Exhibit-23 under Order 7 Rule 11 on the ground that present suit is untenable as there

was earlier decision in RCS No.276 of 2000 dealing with the subject matter as well as the will in question. The cause of action is contended to be illusory. It is further pleaded that the plaintiff is not entitled to any relief otherwise also as he had no right or interest in the subject matter. The application is contested by respondent no.1 and it was rejected by order dated 13.03.2005.

4. Learned counsel Mr. Mukul S. Kulkarni submits that plaintiff's husband Mr. Gangadhar was a party in the earlier suit, in which the decree was confirmed up to the Supreme Court. The cause of action in present suit is illusory and the suit is vexatious. It is vehemently contended that registered will executed by Mrs. Anjanabai bequeathing the property to the applicant was proved by the categorical findings. The plaintiff's husband did not challenge the will or his exclusion from the suit property but after his death the plaintiff is agitating the grievance which is impermissible. It is further submitted that the suit is hopelessly barred by limitation when will was already pressed into service in earlier round of litigation. It is further submitted that impugned order is cryptic and unreasoned.

5. Per contra, learned counsel Mr. S. S. Gangakhedkar supports the impugned order. It is submitted that will in question was executed during the pendency of RCS No.276 of 2000. My attention is adverted to pleadings in para no.3 to 6 of the plaint to show that there is a reason to infer that it was not possible or there was no occasion to challenge the will earlier. It is submitted that application Exhibit-23 is very vague and drastic action cannot be taken. The defence of the applicant can be dealt with during the course of trial.

6. I have considered the rival submissions of the parties. Earlier RCS No.276 of 2000 was filed for partition by Mrs. Gangubai. Mrs. Anjanabai Baburao Lahare was initially defendant and later on transposed as plaintiff no.2. After her death, present applicant and plaintiff's husband Mr. Gangadhar were brought on record as heirs. It has been specifically pleaded in the plaint that the plaintiff Mrs. Anjanabai trusted applicant due to close relations and she was illiterate. The applicant was lawyer and he had assured her to safeguard her interest and the will in question is stated to have been executed by misrepresentation. It is further stated that Mr. Gangadhar also relied upon applicant and he was also assured to offer his interest.

7. The plaint candidly depicts the cause of action. It can be inferred that plaintiff was not aware of the purport of the will and the repercussions of mischief of applicant. In this backdrop, the present suit has been filed challenging the will. I am of the considered view that suit needs to be tried on its own merits. At this juncture, it cannot be concluded that it is vexatious or claim of the plaintiff is unsustainable. I find that it is not a case to hold that the cause of action shown is not the first cause of action.

8. In earlier round of litigation, RCS No.180 of 2024 was decreed and decree was confirmed up to the Supreme Court. The ground of *res judicata* and estoppel need to be gone into during the course of trial. At this juncture, it cannot be said that it is impermissible to challenge the will. The validity of the will was not the fact in issue in earlier round of litigation.

9. A careful perusal of application Exhibit-23 does not spell out specific grounds on which the rejection of plaint is solicited. The tenor of application shows that ground of *res judicata* and sustainability of the claim are pressed into service. Neither of the

grounds are sufficient for drastic action of the rejection of the plaint. It has been laid down in (2021) 9 SCC 99 Shrihari Hanumandas Totala vs. Hemant Vithal Kamat that res judicata cannot be a ground to reject the plaint.

10. Learned counsel for the applicant refers to judgment dated 22.12.2024 passed in Praveen Kedarnathji Kabra vs. Rahul Sureshlal Bassaiye and Ors. in Civil Revision Application No.62 of 2024 by the coordinate bench holding that when plaintiff is not claiming any independent right, it cannot be treated to be first cause of action. In that case the cause of action was held to be apparently barred by Article 58 and 113 of the Limitation Act. In that matter plaintiff was held to be aware of the sale deed in question in the year 1983 and the cause of action which was shown for challenging the sale deed by suit filed in 2024 is held to be articulated and barred by time. The judgment is distinguishable on facts. In the case in hand, the same analogy cannot be made applicable because misrepresentation of the applicant/defendant has been pleaded. The judgment cited will not help the applicant.

11. No specific plea of limitation has been taken in application Exhibit-23. Otherwise also limitation can be said to be mixed question of law and facts. I do not find that there is perversity or patent illegality in the impugned order. I find no substance in the revision.

12. Civil Revision Application is rejected. The observations made hereinabove are *prima facie* in nature.

(SHAILESH P. BRAHME, J.)

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