



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

CIVIL REVISION APPLICATION NO. 23 OF 2023

Yashodhan Laxman Bhurange
age 30 yrs, Occ. Agriculturist,
R/o at Arvind Complex, Plot no.-13,
Sinhagad Road, Ner Nityanand Hall,
Hingane Khurd, Pune 411 051.

Thr his Power Of Attorney Holder
Madhuri Laxman Bhurange,
age 60 yrs, Occ. Business,
R/o at R/A Arvind Complex, Flat No.C-13,
Sinhagad Road, near Nityanand Hall,
Hingane Khurd, Pune 411 051. Applicant.

VERSUS

1. Balasaheb Govind Bhurange,
age 75 yrs, occ. Business,
Died through L.Rs.
- 1.1 Mrs. Salan Sarjerao Gadhave,
age 45 yrs, Occ. Housewife,
R/o Chakhalewadi, Tq. Karjat,
Dist Ahmednagar 414 402.
- 1.2 Mr. Arun Balasaheb Burange,
age 40 yrs, Occ. Agriculturist,
R/o Near Pir Fata, Jamkhed,
Shrigonda Road, Ruigavhan,
Tq. Karjat, Dist. Ahmednagar 414 402.
- 2.1 Smt. Anusaya Ramchandra Bhurange,
age adult, occ Agriculturist.
- 2.2 Mrs. Binabai @ Lankabai Sanjay Bitke,
age adult, occ. Agriculturist.
3. Shri Prakash Kisan Bhurange,
age 49 yrs, Occ. Agriculturist.

4. Mandabai Kilas Khatke,
age 45 yrs, Occ. Agriculturist,
Defendant no.1 to 4 are at Post
Chakhalewadi, Tq. Karjat,
Dist Ahmednagar.
 5. Yamunabai Kantilal Devgire,
age 47 yrs, Occ. Agriculturist,
R/o at Post Pategaon, Tq. Karjat,
Dist. Ahmednagar.
- Respondents.

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Advocate for the Petitioner : Mr. Shrivallabh Panchpor and T.M. Tandale

Advocate for Respondents : Mr. PB. Shirsath

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : February 24, 2025

ORDER :-

1. The applicant impugns the order dated 21.04.2022 passed below Exhibit 19 in Regular Civil Suit No.267 of 2021 pending before the Civil Judge Junior Division, Karjat on application filed by the original applicant/original defendant seeking rejection of plaint under Order 7, Rule 11 of the Civil Procedure Code.

2. The deceased / respondent No.1 instituted Regular Civil Suit No.267 of 2021 seeking relief of partition and separate possession of his $\frac{1}{4}$ share in the suit properties i.e. land Gut Nos.

186 and 289, particularly, specified in paragraph No.1 of the plaint. According to the plaintiff, suit lands were originally owned by his father Govind Keru Burange alongwith lands Gut Nos.197, 87, 182, 286, 283. His father expired on 15.04.1991 leaving behind four sons and four daughters. After death of father, the lands were mutated in the name of legal heirs of Govind, however, later on sisters relinquished their share in the ancestral property. Accordingly mutation entry No.252 has been recorded. The plaintiff asserts that after relinquishment of the shares by the sisters, all four brothers inherited ancestral properties. However, by way of family arrangement, the lands in gut Nos. 197, 87, 182, 286, 283 and 279 have been recorded independently in the name of brothers and all those lands are in fact jointly owned and possessed by them. According to the plaintiff, the suit land bearing Gut Nos. 186 and 289 are in his possession as owner and he has grown fruit trees and developed it for horticulture. According to plaintiff, his brother Laxman has divorced his wife Madhuri. Defendant No.1 is son of Laxman. He resided with the plaintiff in joint family till his death. However, upon death of Laxman, his son mutated his name in record of rights and intending to sale to the third

person. Plaintiff further asserts that he has $\frac{1}{4}$ share in the suit property.

3. Applicant/original defendant filed his written statement so also filed an application under Order 7, Rule 11 of the Civil Procedure Code seeking rejection of the plaint on the ground that the suit sans cause of action. Plaintiff has no *locus-standi* as suit properties have been partitioned in the year 2001 under Section 85 of the Maharashtra Land Revenue Code, 1966. Laxman was the exclusive owner of the suit properties since the date of partition of 2001 which is reflected in record of rights vide mutation entry No.258. The present suit is filed on the basis of illusory and fictitious cause of action. It is further contended that all other co-parcenary lands are not included in common hotchpotch. The suit is filed with malafide intention and deserves to be rejected at the threshold.

4. The Trial Court rejected the application of the defendants vide impugned order dated 21.04.2022 holding that trial is necessary to decide nature of mutation entry No.258 i.e. whether it was a family arrangement and reflection of actual partition by metes and bounds or it was a family arrangement.

5. Mr. Vallabh Panchpor, learned Advocate appearing for the applicant submits that Section 85 of the MLR Code provides for partition of land either under decree of Court or on application of the parties on the basis of partition amongst them by metes and bounds. In present case, there is order of Competent Authority as to partition of the property in the year 2001. Since, the date of partition, lands have been mutated independently in the name of respective coparceners. He would further invites attention of this Court to the contents of plaint to show that partition is sought only in respect of lands which were allotted in the name of Laxman i.e. father of defendant. The plaintiff has made categorical statement that he is not seeking partition in respect of other lands which are mutated in his own name and other two brothers.

6. Mr Panchpor, learned Advocate would invite attention of this Court to the judgment of the Supreme Court in case of Kenchegowda Vs. Siddegowda alias Motegowda reported in (1994) 4 SCC, 294, which lays down that the suit for partition shall not be maintainable unless all joint family properties are made subject matter of the suit. He would further place reliance on observations of the Karnataka High Court in case of **Shri P**

Ramprasad Vs. Shri Thyagraj and Ors. decided on 24.08.2023 (CRP No.70 of 2022).

7. Learned Advocates appearing for the respondents supports the order.

8. Having considered the submissions advanced, it would be necessary to refer to the parameters of the jurisdiction to be exercised under Order 7, Rule 11 of the Civil Procedure Code. It is trite law that the plaint can be rejected only on the basis of averments therein and no external aid is permissible. The documents which are annexed to the plaint shall be treated as part of the plaint and reference to such documents is permissible. The Court is required to exercise jurisdiction under Order 7, Rule 11 diligently. The Court shall also examine if suit is filed on the basis of genuine cause of action. The Court should be conscious of suppression of facts, illusory and camouflage cause of actions.

9. Although, the parameters for exercise of jurisdiction are in narrow compass but the Courts are under obligation to cull out vexatious litigation. At this stage, law laid down by the Supreme Court of India in case of **Dahiben vs Arvinbhai**

Kalyanji Bhanusali (Gajra) reported in AIR 2020 SUPREME COURT 3310, particularly paragraph No 13 and 14 is necessary which reads thus:

“13. Cause of action” means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.

14. The Limitation Act, 1963 prescribes a time-limit for the institution of all suits, appeals, and applications. Section 2(j) defines the expression “period of limitation” to mean the period of limitation prescribed in the Schedule for suits, appeals or applications. Section 3 lays down that every suit instituted after the prescribed period, shall be dismissed even though limitation 10 (1998) 2 SCC 170.

10. In light of the exposition of law by the Supreme Court of India, certain important facts that can be gathered from the minute reading of the plaint needs reference. Govind Keru Burange i.e. father of plaintiff was owner of the lands bearing Gut Nos. 197, 87, 192, 186, 289, 286, 283, 279. Upon his death on 15.04.1991, lands were jointly mutated in the name of his four sons and daughters. Later on all four daughters relinquished their right under deed of relinquishment dated 18.05.2001. Thereafter, mutation entry No.252 was recorded and all the lands were mutated in the name of four brothers. Pertinently, the plaintiff specifically admits that later on the

mutation entry showing individual ownership of all four brothers in respect of particular Gut numbers have been recorded with caveat that it was by way of family arrangement. Pertinently, the plaintiff is not seeking partition of Gut Nos. 197, 87, 182, 286, 283 and 279 which are mutated in his own name and in the name of defendant Nos.2 and 3. Partition is sought only in respect of land Gut Nos.186 and 289 that has been mutated in the name of brother Laxman i.e. father of defendant No.1. Pertinently, after death of Laxman, suit lands have been mutated in the name of his son Yashodhan, who is residing at Pune. At this stage following statement in the plaint is material to find out real intent behind filing the suit which is as under:

“दावा मिळकतीची वहिवाट मालकी हक्काने वादी करित आहे. दावा मिळकत ही वादीचे ताबे वहिवाटीला आहे. दावा मिळकतीत वादीने निमोनी, चिक्कू या फळझाडाची लागवड केलेली आहे. तसेच इतर नगदी पिके ही वादी घेत आहे.”

11. In continuation of the aforesaid statement in the plaint, plaintiff asserts that his brother Laxman has divorced with his wife in the year 1986 and defendant No.1 was residing with his mother at Pune whereas Laxman resided with plaintiff in the joint family till his death.

12. In view of aforesaid statement in the plaint, it can be easily inferred that plaintiff wants to assert his right as an owner on individual share of the Laxman and seeks to exclude defendant No.1 from dealing or enjoying the suit properties. Plaintiff has cunningly suppressed the date of mutation entry as to the partition. However, from reading of contents from paragraph No.1, it is apparent that long back there was partition amongst brothers and mutation entries to that effect have been recorded under order of the Competent Authority under Section 85 of the MLR Code.

13. The partition was acted upon and all brothers were enjoying ownership and possession of individual share. If real intention of the plaintiff would have been to seek partition of the joint family properties, he could have asked for partition in respect of all lands left behind his father Govind Burange. However, conveniently, he is seeking partition of the properties that fell to share of Laxman and now inherited by his son/defendant No.1. It is difficult to believe that individual entries in the 7/12 extract in the name of the brothers was family arrangement, particularly, in light of subsequent statement of the plaintiff that suit land is under his cultivation as

owner and he developed horticulture. The plaintiff had no reason to assert his independent ownership and cultivation over suit property consisting of only two gut numbers when his father had left behind 8 individual properties from different gut numbers. Eventually, in case of family arrangement as pleaded in plaint, all properties would have been jointly passed by all brothers, but plaintiff asserts his exclusive ownership and possession over land allotted to Laxman. It falsifies his contention that suit property is still joint.

14. Aforesaid observation shows that the suit is vexatious and malicious and designed only with intention to deprive defendant No.1 from enjoying ancestral property received by him from deceased Laxman. The plaintiff wants to establish his own right even on the share of Laxman and exert nuisance value against defendant No.1. There is no reason to permit such litigation, which not only cause undue harassment of the defendants but also burdens the judiciary.

15. It is true that sometimes, mutation entry itself would not be proof of partition. There are certain cases where mutations are effected by way of family arrangement to facilitate receipt of benefits of various schemes. However, in

facts of the present case, it is evident that all four brothers were enjoying property individually and only after death of Laxman, plaintiff has instituted the suit to eliminate Laxman's son. It shows that cause of action pleaded is illusory and camouflage. Suit is certainly vexatious and liable to be threshold.

16. In the result, the impugned order deserves to be quashed and set aside and application Exhibit-19 needs to be allowed under Order 7 Rule 11 of the Civil Procedure Code to reject the plaint in Regular Civil Suit No.267 of 2021. Hence, the order.

ORDER

- i. Civil Revision Application is **allowed**.
- ii. The application at Exhibit-19 in Regular Civil Suit No.267 of 2021 is allowed under Order 7 Rule 11 of the Civil Procedure Code.
- iii. Civil Revision Application is disposed of.
- iv. Pending civil application, if any, also stands disposed of.

(S. G. CHAPALGAONKAR, J.)

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