



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

933 CRA NO. 136 OF 2025

BHAGWANRAO S/O RAOSAHEB GHOGRE AND OTHERS

VERSUS

MAHADEVI W/O VILAS BAGADE AND OTHERS

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Advocate for Applicants : Mr. Madde Shrikant B.

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CORAM : SHAILESH P. BRAHME, J.

DATE : 15.07.2025

PER COURT :-

1. Heard learned counsel for the applicants.
2. This revision is directed against order of rejection of application Exh.55 filed by the applicants/defendants under Order VII Rule 11 of the C.P.C.
3. Respondents have filed Special Civil Suit No.7 of 2019 for declaration that deed of partition dated 24.05.2013 is null and void and not binding on the plaintiffs partition, possession, mesne profit and declaration. It is contested by the defendant by filing written statement. They have raised various pleas including non-joinder of necessary parties, limitation, not bringing all the joint family properties in common hotchpot, want of cause of action etc. Besides that they preferred application Exh.55 for rejection of the plaint which is rejected by impugned order on 09.06.2025.

4. Respondents/plaintiffs are married daughters of Madhukar Raosaheb Ghogre brother of applicant No.1 Bhagwan. Applicant Nos.2 and 3 are sons of Bhagwan Ghogre and applicant No.4 is his wife. The partition deed was executed between Bhagwan and deceased Madhukar on or about 24.05.2013 which was registered document. It is the case of the respondents that they learnt about the partition deed and the deception played by the applicants in the month of March 2018. After deliberation, which were in vain suit was filed on 29.03.2019.

5. Learned counsel Mr. Madde for the applicants submits that application Exh.55 ought to have been allowed as suit is barred by limitation. It is bad for non-joinder of necessary parties i.e. Satyabhamabai and Sumanbai and all properties are not brought in common hotchpot. It is further contended that cause of action is illusory. Learned counsel submits that Trial court committed grave error of jurisdiction when Satyabhamabai and Sumanbai are necessary parties. It is further submitted that parties cannot be dragged to trial when no cause of action is made out. It is further contended that respondents/plaintiffs did not challenge Will.

6. Reliance is placed on the judgments of Supreme Court in the matter of *Church of Christ Charitable Trust and Educational Charitable Society represented by its Chairman Vs. Ponniamman Educational Trust represented by its Chairperson/Managing Trustee ; (2012) 8 Supreme Court Cases 706* and *Ramisetty Venkatanna and another Vs. Nasyam Jamal Saheb and others ; 2023 SCC OnLine SC 521*.

7. Applicants have filed written statement and raised plea of limitation, non-joinder of necessary parties, not bringing all joint family properties in common hotchpot, not challenging Will deed etc. It's a trite law that for inquiry under Order VII Rule 11 only averments of the plaint and documents annexed along with it are to be looked into. Plea raised by the defendants in the written statement cannot be gone into. The grounds raised by the applicants regarding non-joinder of necessary parties, not bringing all properties in common hotchpot, not challenging Will deed involve disputed question of facts. Those can be gone into during course of trial.

8. So far as ground of limitation under Section 59 of Limitation Act is concerned it is mixed question of facts and law. It would be too harsh to thwart plaint on the said ground in given facts and circumstances.

9. So far as cause of action is concerned in paragraph Nos.6 and 7 elaborately disclose cause of action. I find no merits in the submissions of the learned counsel for the applicants. View taken by the learned Judge is plausible and reasonable.

10. Reliance is placed on the judgment of Supreme Court in the matter of *Church of Christ Charitable Trust*. I have gone through paragraph Nos.24, 25 and 26 of the judgment. On facts the judgment is distinguishable. The same would not enure to the benefit of the applicants. Similar is the case with another judgment of Apex Court in the matter of *Ramisetty Venkatanna*. The principle laid down therein is a trite law that the averments of the plaint need to be considered for deciding application under Order VII Rule 11. No case made out.

11. Civil revision application is dismissed.

(SHAILESH P. BRAHME, J.)

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vmk/-