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CRA 132.23 R.odt

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

CIVIL REVISION APPLICATION NO. 132 OF 2023

**GEODESY PROPERTY CONCEPT AND OTHERS
VERSUS
JAMUNABAI W/O. PRATAP GELOT AND OTHERS.**

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Mr. L.D. Vakil, Advocate for applicants,
Mr. A.D. Kawliwal, Advocate for respondent Nos. 1 to 5.

CORAM :S.G. CHAPALGAONKAR, J.

DATE : 24th FEBRUARY, 2025.

ORDER :-

1. Present Civil Revision Application takes exception to the order dated 9.6.2023 passed by 3rd Joint Civil Judge (J.D.) Gangapur, below Exh.31 in RCS No. 354 of 2026, by which prayer of applicants/ original defendant Nos. 2 to 5, seeking rejection of plaint under Order 7 Rule 11 of CPC, came to be declined.

2. Respondents filed RCS No. 354 of 2021 seeking a decree of partition and separate possession in respect of suit properties i.e. land Gat No. 128 situated at village Jambhala, Taluka Gangapur, Dist. Aurangabad. It is contention of the plaintiffs that suit land was originally owned by Dhagu Pawar, who died on 1.5.1998 leaving behind plaintiffs and wife Ratnabai. His son Ramdas per-deceased him. Ramdas died leaving behind two daughters and wife Jamunabai. Lateron, Ratnabai and Jamunabai i.e. wife of Dhagu and wife of Ramdas expired. According to plaintiffs, in the year 2020, they noticed that name of defendant No.1

is mutated in record of rights of the suit property vide mutation entry No. 893 on the basis of sale deed dated 8.3.1993. Lateron, there are mutation entries of subsequent transfers and lastly, mutation entry has been effected in the name of defendant No.2 on the basis of sale deed dated 21.9.2010.

3. The plaintiff obtained certified copies and noticed that Ratnabai w/o. Dhagu Pawar executed registered sale deed dated 8.3.1993 in favour of defendant No.1 Malti Kadam, who lateron, transferred the land in favour of defendant Nos. 2 to 5 under registered sale deed dated 21.9.2010. According to plaintiffs, Ratnabai was aged about 75 years at the time of execution of sale deed. She was illiterate lady and there was no possibility that she could have executed sale deed in favour of defendant No.1. They alleged that sale deed is false and not binding upon on them. Plaintiffs further pleaded that plaintiffs have substantive rights and share in the property and Ratnabai Pawar was not legally entitled to sale or alienate the same in exclusion of right of plaintiffs. They asserts that sale deed executed by Ratnabai is ineffective and consequential sale transactions are also invalid. When plaintiffs got knowledge about aforesaid transactions, suit has been instituted.

4. Defendant Nos. 2 to 5 appeared in the suit and filed written statement, so also, filed application below Exh.31 under Order 7 Rule 11 of CPC, seeking rejection of plaint on following two grounds :-

- (I) Firstly, suit is based on illusory cause of action;
- (II) Secondly, suit is hopelessly barred by limitation.

5. Plaintiffs filed reply and refuted the prayer in the application. The trial court, after hearing respective parties, rejected the defendant's application vide impugned order dated 9.6.2023.

6. Mr. L.D. Vakil, learned advocate appearing for applicant submits that Dhagu Jayram Pawar, original owner of land expired in the year 1988. Name of Ratnabai was mutated being legal heir of deceased vide mutation entry dated 16.6.1988. He invites attention of this Court to the 7 x 12 extract, which depict that name of Ratnabai was appearing as owner. Thereafter, Ratnabai executed sale deed dated 8.3.1993 in favour of defendant No.1. The name of defendant No.1 was entered in record of rights vide mutation entry No. 893 dated 22.2.1994. Thereafter, defendant No.2 purchased land from defendant No.1 under registered sale deed dated 21.9.2010. Eventually, mutation entry No. 1902 dated 7.1.2011 has been sanctioned. Thereafter, defendant Nos. 3 to 5 purchased suit land under registered sale deeds executed in February and March, 2020.

7. Mr. Vakil would further submit that registered sale deeds as well as mutation entries have presumptive value and shall be treated as notice to the public at large. Plaintiff Nos. 1 to 3 are daughters of late Dhagu Pawar and they had no legal right to inherit his property of under the Hindu Succession Act. He would further submit that alienation made by Ratnabai in the year 1993 is not challenged in the suit, nor such challenge would be within limitation. Even subsequent sale transactions are not challenged. The cause of action shown in the suit is illusory and upon plain reading of the contents of the plaint, suit can be termed as

“Vexatious” and hence, liable to be dismissed in exercise of jurisdiction under Order 7 Rule 11 of CPC.

8. Per contra, Mr. Kasliwal, learned advocate for respondents supports the impugned order contending that question of limitation would be a mixed question of facts and law. A specific cause of action has been pleaded in the plaint. Even the plaintiffs have pleaded date of getting knowledge as to the execution of sale deed by Ratnabai. Therefore, suit is well within limitation.

9. Before entering into controversy, it would be appropriate to cull-out parameters for exercise of jurisdiction under Order 7 Rule 11 of CPC from exposition of law by Supreme Court through series of judgments.

- [i] The remedy under Order 7 Rule 11 is regarded as special remedy empowering the courts to summarily dismiss the suit at the threshold on any of the grounds contained in Order 7 Rule 11.
- [ii] It is the duty of the Court to see, whether the plaint discloses cause of action on the basis of averments made in the plaint, in conjunction with documents relied upon.
- [iii] On meaningful reading of the plaint if it is found that suit is manifestly vexatious and without merit, does not disclose a right to sue, the Court is justified to reject the plaint.
- [iv] The court should also bear in mind that clever drafting of the plaint or illusions created for cause of action, does not camouflage while ascertaining clear right of the plaintiff.

- [v] Any illusory cause of action creating bogus litigation shall be nipped in bud.
- [vi] Similarly, Court must bear in mind suppression of material facts and attempts of abuse of process of court.
- [vii] The note of caution needs to be taken that the issues, which require adjudication on trial shall be not be touched while exercising jurisdiction under Order 7 Rule 11 of C.P.C.
- [viii] The defence put forth in written statement or documents tendered by way of defence shall not be considered.
- [ix] The decision must be based on pleadings and documents tendered with plaint itself.

10. In the light of aforesaid parameters, it would be necessary to have a look to the pleadings in the plaint. Plaintiffs have pleaded that Dhagu Pawar was original owner of land. He died leaving behind wife Ratnabai, his three daughters (plaintiff Nos. 1 to 3) and wife and two daughters of pre-deceased son Ramdas. Daughters of Ramdas are arrayed as plaintiff Nos. 4 and 5. Plaintiffs are claiming right by way of succession in the suit land being daughters and grand-daughters of Dhagu Pawar. It appears on 8.3.1993, Ratnabai executed sale deed in favour of defendant No.1. Thereafter, defendant No.1 transferred property under sale deed dated 22.9.2010. Plaintiffs pleaded that in the year 2020, they came across mutations recorded in the name of defendants.

11. The aforesaid chain of events would demonstrate that plaintiffs being Class I heirs of deceased Dhagu Pawar certainly hold right of inheritance in the suit property. The mutation entry No. 74

recorded immediately after death of Dhagu Pawar shows that names of Ratnabai, wife of Dhagu, his three daughters and daughter in law have been mutated. Lateron, 7 x 12 extract shows name of Ratnabai only in the column of ownership. On the basis of said entry, she alone transferred suit property under the sale deed dated 8.3.1993 in favour of defendant No.1. Plaintiffs being Class I heirs of Dhagu Pawar are certainly entitled for the right of inheritance in the property. From the pleadings in the plaint, it can be gathered that plaintiff Nos. 4 and 5 i.e. daughters of pre-deceased son Ramdas were minors and during their minority, their grandmother Ratnabai transferred suit property. Evidently, all plaintiffs have a right to assail the transaction made by Ratnabai.

12. True, that plaintiffs assert that they got knowledge of aforesaid transaction in year 2020, however, whether cause of action is fictitious or not; whether they were aware about the exclusion of their right to seek partition, would be questions to be decided at trial. On the basis of pleadings in the plaint or documents annexed thereto, no presumption can be drawn that plaintiffs had knowledge about the transaction of 1993 made by Ratnabai. At this stage reference can be given to observations of Supreme court in case of *Chottanben Vs Kirtibhai Thakkar reported in (2018)6 SCC 422 and Daliben Valjibhai and others Vs Prajapati Kodarbhai Kacharabhai and another 2024 SCC Online 4105.*

The observations in case of *Chottanben (supra)* in Para. 19 are as under :-

“19. In the present case, we find that the appellant-

plaintiffs have asserted that the suit was filed immediately after getting knowledge about the fraudulent sale deed executed by original Defendants 1 and 2 by keeping them in the dark about such execution and within two days from the refusal by the original Defendants 1 and 2 to refrain from obstructing the peaceful enjoyment of use and possession of the ancestral property of the appellants. We affirm the view taken by the trial court that the issue regarding the suit being barred by limitation in the facts of the present case, is a triable issue and for which reason the plaint cannot be rejected at the threshold in exercise of the power under Order 7 Rule 11 (d) CPC.”

13. Article 110 of the Limitation Act applies to claim of partition, which reads thus :-

Article	Description of Suit	Limitation	Time from which period begins to run
110	By a person excluded from a joint family property to enforce a right to share therein.	Twelve years	When the exclusion becomes known to the plaintiff.

Plain reading of aforesaid provision shows that limitation runs from the date when exclusion becomes known to plaintiffs. Therefore, unless it is demonstrated that plaintiffs had express or implied knowledge of exclusion of their right, limitation would not run against them. It is for the defendants to show that more than 12 years prior to filing of the suit, plaintiffs were aware about the exclusion of their right in the joint family property. Therefore in facts of this case issue of limitation becomes triable and needs to be answered accordingly.

14. In view of aforesaid factual and legal aspects, no error can be found in impugned order passed by trial court thereby rejecting the application below Exh.31.

15. In the result, civil revision application stands rejected.

[S.G. CHAPALGAONKAR, J]

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