IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 124 OF 2024

1. Rohit Enterprises,
Through its Proprietor,
Mr. Gopal Baban Jadhav
Age 57, Occ. Business.

2. Mrs. Sujata Gopal Jadhav,
Age 52 yea rs, Occ. Home maker,

3. Rohit Gopal Jadhav,
Age 30, Occ. Home Maker

All residing at Shri Krupa Agency,
Building No.D-1, Room No.4,
Sector 22, Koparkhairna,
Maharashtra – 400 709. .. Applicants,
(Original defendants)

Versus

1. Mr. Babasaheb Ramdas Shirole,
Age 48 years, Occ. Teacher,
Residing at Ne ar Pirbaba Temple,
At post Akalapur, Taluka Sangamner,
Akalapur, Ahmednagar,
Maharashtra 422 620.

2. Mr. Rambhau Karbhari Hande,
Age 47 years, Occ. Teacher,
Residing at Wadegaon Landaga,
Hande Wasti, Sangamner,
Ahmednagar.

3. Mr. Santosh Dattatraya Shelke
Age 47 years, Occ. Teacher,
Residing at Gondhale Vaste, Bota,
Sangamner, Ahmednagar.

4. Mr. Bhausaheb Bajirao Dhokare,

Age 48 years, Occ. Occ. Teacher,
Residing at Mohanwadi, at Post
Kauthae, Khurd, Ghargaon,
Ahmednagar, Maharashtra 422 620.

5. Mr. Suresh Sitaram Dhokare,
Age 50 years, Occ. Teacher,
Residing at Khote Kd, Post Kothe,
Bk. Tal. Sangamner, Kauthe Khurd
Ahmednagar, Maharashtra 422 620.

6. Mr. Dadabhau Balasaheb Belote,
Age 48 years, Occ. Teacher,
Residing at Sawargaon, Taluka
Ahmednagar, Maharashtra 422 605.

7. Mr. Balu Dashrath Karpe,
Age 53 years, Occ. Teacher,
Residing at Pimparne, Near Maruti
Temple, Sangamner, Ahmednagar.

8. Mr. Satyawan Rakhma Gadge,
Age 45 year s, Occ. Teacher,
Residing at Gavthan at Borban,
Post Ghargaon, Taluka Samgamner,
Borbanwadi, Ghargaon, Ahmednagar.
Maharashtra 422 620.

9. Dattu Gangadhar Thitame,
Age 56 years, Occ. Teacher,
Residing at Post Sawargaon, Taluka
Sangamner, District Ahmednagar.

10. Mr. Laxman Karbhari Hande,
Age 49 years, Occ. Teacher,
Residing at Post Vadgaon Landga,
Taluka Sangamner, Hande Vasti,
Wadegaon Landga, Ahmednagar.
Maharashtra 422 603.

.. RESPONDENTS
(Original plaintiffs.)

Mr. A.A. Fulfagar, Advocate for applicants.
Mr. V.B. Gadekar, Advocate for respondent Nos. 1 to 10.

CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 27th March, 2025.
PRONOUNCED ON : 9th APRIL, 2025.

JUDGMENT :-

1. Applicants/original defendants impugn the order dated 8.4.2024 passed by Civil Judge (Senior Division) Sangamner, below Exh.13 in Special Civil Suit No. 126 of 2023, by which, the prayer for rejection of plaint under Order 7 Rule 11 of CPC, has been declined. (For sake of convenience parties are referred as per their original status in suit)

2. Respondents/plaintiffs who are teachers by profession instituted Special Civil Suit No. 126 of 2023 seeking following reliefs :-

"a) It be declared that, the plaintiffs are owner of the suit property;

b) It be declared that, the sale deed dated 20th July, 2013 bearing Its Registration No. 5551 of 2013 (Annexure `D' to the plaint) executed between the plaintiffs and defendants herein, are void-ab-initio since executed by the defendants thereby perpetuating fraud on the plaintiffs herein;

c) That the Sale Deed dated 20th July, 2013 bearing registration No. 5551 of 2013 (Annexure D to the plaint) executed between the plaintiffs and defendants herein be cancelled and set aside;

d) The defendants herein be perpetually restrained from interfering with peaceful possession of plaintiffs over suit properties;

e) Pending hearing and final disposal of the present suit, the defendants be restrained from selling, mortgaging or encumbering the suit properties to any third party in any manner ;

f] Ad-interim relief in terms of prayer clause (e) above.”

3. Plaintiffs contend that they jointly purchased suit plot, admeasuring 20 Gunthas bearing Survey No. 140/243/2 by registered sale deed dated 12.12.2009. They mutually decided to develop the properties availing professional services of a Developer and entered into Development Agreement with defendant No.1, who agreed to develop the suit property against retention of 60% construction area. Defendant No.1 had agreed to undertake tedious paper work and conclude development work expeditiously. The agreement was reduced into writing and executed on 20.7.2013. Plaintiffs have also executed the registered sale deed of suit property in the name of defendant No.1, to ensure easy paper work against fictitious consideration of Rs. 38,11,000/-. Plaintiffs parted ownership right in favour of defendant No.1 under an impression that it would ne convenient and necessary for expeditious development of suit properties.

4. Defendants kept plaintiff assured to complete the development work. Defendant No.1 constructed column and plinth on suit property. However, giving the reason of COVID situation, dragged the development process. Meanwhile, defendant No.1 mutated his name in revenue record. According to plaintiffs, the sale deed is ab-initio-void and non-est. Plaintiffs executed sale deed keeping blind faith on defendants. However, on 21.10.2023 defendants changed their behaviour and gave threat to plaintiffs to take possession of property. Hence, cause of action arose to file the suit.

5. Defendant Nos. 1 to 3 caused their appearance and filed application seeking rejection of plaint below Exh.13, contending that

plaintiffs are seeking to challenge registered sale deed dated 20.7.2013 on the ground of fraud and misrepresentation. The suit is clearly barred by limitation since Article 59 of the Limitation Act provides for period of three years to seek declaration against sale deed. According to defendants , suit is without cause of action.

6. Plaintiffs opposed the aforesaid application on the ground that issues as raised in the application are mixed questions of fact and law and require trial, therefore, it cannot form as basis for rejection of plaint under Order 7 Rule 11 of CPC.

7. The trial court, after considering rival contentions, rejected application on the ground that issue of limitation is mixed question of law and fact and cannot be decided unless evidence is led parties. The defendants can raise such plea in written statement and issue in this regard can be framed and decided during trial.

8. Mr. Fulfagar, learned advocate for applicants/defendants contends that the registered sale deed dated 20.7.2013 is assailed in present suit, filed in month of October, 2023. A period of 10 years and 3 months has elapsed. He submits that plaintiffs are seeking declaration that sale deed is void ab initio and result of fraud on plaintiffs and same deserves to be cancelled and set aside. Plaintiffs are further seeking substantial relief of perpetual injunction. According to Mr. Fulfagar, pleading as to fraud and his representation is vague and unspecific. The cause of action of 2023 is false and camouflage. Only because value of lands is multiplied, present suit is brought with intention to extract money from defendants. Mr. Fulfagar, submits that suit is ex-facie barred by limitation. According to him, suit filed under Section 31 of the

Specific Relief Act, either for declaration of transaction as void or voidable, Article 59 of the Limitation Act would attract. He submits that there is no allegation in the plaint regarding fraudulent misrepresentation as regards to character and contents of documents. In support of his contentions, he heavily relies upon the judgments of the Supreme Court of India in the matter of ***:-***

1. C.S. Ramaswamy vs. V.K. Santhil (2022) 2 Mh.LJ. 161 and

2. Mukund Bhavan Vs. Shrimant Chhatrapati UdayanRaje and another reported in (2025) AIR (SC) Civil 392.

3. Dahiben vs. Arvindbhai Kalyanji Bhanushali (2020)7 SCC 366

4. K. Akbar Ali vs. K. Umar Khan and others.(2021) 14 SCC 51

5. M.R. Vinoda vs. M.S. Shsheelmma and others (2021) 20 SCC 180

6. Popat and Kotecha Property vs. Sate Bank of India Staff Association (2005) 7 SCC 510.

7. Ramti Devi (smt.) Vs. Union of India (1995) 1 SCC 198.

9. Per contra, Mr. V.B. Gadekar, learned advocate for respondent Nos. 1 to 10 submits that plaintiffs are teachers, who had purchased the lands with intention to develop it for their own use and due to misrepresentation by defendants, they executed sale deed without consideration. Defendants initiated construction but under pretext of COVID they protracted the same. When plaintiffs came to know about bad intention of defendants to grab the property, on the basis of registered document, present suit has been instituted. He submits that rejection of plaint under Order 7 Rule 11 of CPC implies drastic action to terminate civil suit, unless pleadings ex-facie disclose that suit is barred by limitation or under any law, the powers cannot be exercised. Even while exercising such powers, the defence in written statement or in

application for rejection of plaint is wholly irrelevant and court has to form an opinion as to existence fo cause of action or limitation only on the basis of contents of plaint. He would urge that plaintiffs have specifically pleaded fraud and misrepresentation against defendants while execution of impugned sale deed.

10. The issues as raised require pleadings and evidence. He would further submit that in the facts of the case, Section 17 of the Limitation Act would apply. Therefore, unless plaintiff's discovered fraud, period of limitation would not begin to run. Plaintiffs have clearly mentioned the date when they came to know about the bad intention of defendants to grab the property and immediately instituted suit. Therefore, he urges to maintain the order passed by the trial court. In support of his contentions, he relies upon the judgment of the Supreme Court ***in case of R.V. Guru Raj Reddy Vs. T. Narsimha Reddy reported in AIR 2015 SC 2485.***

11. Having considered submissions advanced by learned advocates for respective parties and upon going through the material pressed into service, it can be observed that undisputedly plaintiffs executed registered sale deed dated 20.7.2013 in favour of defendants. Plaintiffs are teachers and educated persons having sufficient understanding of transactions. They contend that they entered into development agreement with defendant No.1 with intention to develop the land. Copy of notarized development agreement is made part of the plaint. Apparently, date of development agreement is 20.7.2013, wherein, it is agreed between parties that defendant would develop lands and construct building containing flats as per the Build up area, 40% part of construction to be handed over to plaintiffs and 60% was to be given

to the share of developers. Clause No.7 of the development agreement stipulates that suit land is agricultural land and same is handed over without consideration to the developer. The impugned registered sale deed is dated 20.7.2013 by which suit property has been alienated by plaintiffs in favour of defendants for consideration of Rs. 38.11,000/-.

12. In the aforesaid set of pleadings and material, the issue that requires consideration is, whether the suit of plaintiff is ex-facie barred by limitation and whether suit is based on genuine cause of action as pleaded in plaint. Before entering into controversy, it is necessary to consider the parameters of jurisdiction under Order 7 Rule 11 of CPC, which are broadly accepted as under :-

> [i] The averments of plaint are only germane for consideration while exercising jurisdiction under Order 7 Rule 11 of CPC. The stand of defendants either in written statement or application for rejection of plaint is wholly immaterial;
>
> [ii] When plaint ex-facie do not disclose cause of action or on reading thereof, the suit appears to be barred under any law, plaint can be rejected.
>
> [iii] Claim of plaintiffs as regards to knowledge of essential facts giving rise to cause of action as pleaded will have to be accepted as correct;
>
> [iv] When allegations made in the plaint are taken to be correct as a whole, on their face value, if they show that suit is barred by law or do not disclose cause of action for rejection of plaint can be entertained and power under order 7 rule 11 can be exercised.
>
> [v] If clever drafting of plaint as created illusion of cause of action, the court will nip it in bud at the earliest so that bogus litigation will end at the earliest.

13. In the light of aforesaid principles of law, discernible from

the exposition of law laid down by Supreme Court in various judgments, following aspects emerging from careful reading of plaint can be highlighted.

[i] Plaintiffs are well educated group of teachers. They entered into development agreement with defendants and also executed registered sale deed dated 20.7.2013. The sale deed stipulate payment of consideration;

[II] The plaintiffs also executed development agreement with defendant No.1.

[iii] Defendant No.1 started construction work/progressed to certain extent. There was no progress after plinth level.

[iv] From the date of registration of sale deed or development agreement, plaintiffs never issued any communication or legal notice, calling upon defendants to expedite construction or raising their grievances, as to progress of construction;

[v] The suit is instituted alleging that plaintiffs executed sale deed due to misrepresentation that for expeditious development of property, tedious paper work, execution of sale deed in favour of defendant no.1 is necessary and it would be convenient for development of timely completion of project;

[vi] Lastly, on 21.10.2023, plaintiffs came to know about intention of defendants to defraud them or grab the property. As such, they filed suit.

14. The aforesaid factual scenario clearly shows that plaintiffs were well aware that execution of sale deed in favour of defendant would pass on title to him. They were well aware about the contents of sale deed and significance thereof. They felt defrauded only when defendant No.1 failed to keep his promise as to development of plot. IN this background, plaintiffs are seeking declaration that the sale deed

dated 20.7.2013 is void-ab-initio. It is trite that Article 59 of the Limitation Act, enables institution of suit to cancel or set aside instrument within a period of 3 years from the date of knowledge, bar of limitation cannot be saved by simply pleading fraud. In present case, the allegations constituting fraud are not based on contents of documents. Even essential particulars of fraud are missing. In this background, the observations of Supreme Court of India in the matter of ***C.S. Ramaswamy (supra)*** are relevant, which read thus :-

> *"7.7 Even the averments and allegations with respect to knowledge of the plaintiffs averred in paragraph 19 can be said to be too vague. Nothing has been mentioned on which date and how the plaintiffs had the knowledge that the document was obtained by fraud and/or misrepresentation. It is averred that the alleged fraudulent sale came to the knowledge of the plaintiffs only when the plaintiffs visited the suit property. Nothing has been mentioned when the plaintiffs visited the suit property. It is not understandable how on visiting the suit property, the plaintiffs could have known the contents of the sale deed and/or the knowledge about the alleged fraudulent sale.*
>
> *7.8 Even the averments and allegations in the plaint with respect to fraud are not supported by any further averments and allegations how the fraud has been committed/played. Mere stating in the plaint that a fraud has been played is not enough and the allegations of fraud must be specifically averred in the plaint, otherwise merely by using the word "fraud", the plaintiffs would try to get the suits within the limitation, which otherwise may be barred by limitation. Therefore, even if the submission on behalf of the respondents – original plaintiffs that only the averments and allegations in the plaints are required to be considered at the time of deciding the application under Order VII Rule 11 CPC is accepted*, in that case *also by such vague allegations with respect to the date of knowledge, the plaintiffs cannot be permitted to challenge the documents after a period of 10 years. By such a clever drafting and using the word "fraud", the plaintiffs have tried to bring the suits within the period of limitation invoking Section 17 of the*

> *limitation Act. The plaintiffs cannot be permitted to bring the suits within the period of limitation by clever drafting, which otherwise is barred by limitation."*

15. In the case of ***Mukund Bhavan (supra)*** the Supreme Court observed in para. 26 as under :-

> *" At this juncture, we wish to observe that we are not unmindful of the position of law that limitation is a mixed question of fact and law and the question of rejecting the plaint on that score has to be decided after weighing the evidence on record. However, in cases like this, where it is glaring from the plaint averments that the suit is hopelessly barred by limitation, the Courts should not be hesitant in granting the relief and drive the parties back to the trial Court. We again place it on record that this is not a case where any forgery or fabrication is committed which had recently come to the knowledge of the plaintiff. Rather, the plaintiff and his predecessors did not take any steps to assert their title and rights in time. The alleged cause of action is also found to be creation of fiction. However, the trial Court erroneously dismissed the application filed by the appellants under Order VII Rule 11(d) of CPC. The High Court also erred in affirming the same, keeping the question of limitation open to be considered by the trial Court after considering the evidence along with other issues, without deciding the core issue on the basis of the averments made by the Respondent No.1 in the Plaint as mandated by Order VII Rule 11 (d) of CPC. The spirit and intention of Order VII Rule 11(d) of CPC is only for the Courts to nip at its bud when any litigation ex facie appears to be a clear abuse of process. The Courts by being reluctant only cause more harm to the defendants by forcing them to undergo the ordeal of leading evidence. Therefore, we hold that the plaint is liable to be rejected at the threshold."*

16. Looking to the aforesaid exposition of law in facts of present case, it can be observed that averments of fraud and misrepresentation no way constitute requisite ingredients. Even otherwise, Article 59 of the Limitation Act, would apply in fact s of present case, which read thus :-

" Article 59 reads thus :

"To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years	When the facts entitling the plaintiff to have the instrument or the contract rescinded first become known to him."

17. In present case, when plaintiffs have executed registered sale deed knowing its contents well, it can not be said that they were unaware about the nature of transaction. Even otherwise, if they had a feeling of being defrauded, there was no impediment for taking action well within 3 years. Although learned advocate for respondent heavily relied upon Section 17 of the Limitation Act, for the reason as recorded by the Supreme Court of India in the case of C.S. Ramaswamy (supra) such a plea would not be available to be raised after 10 years of execution of registered sale deed.

18. At this juncture, reference to observations of Supreme Court in case of ***Saranpal Kaur Anand vs. Praduman Singh Chandhok reported in (2022) 8 SCC 401.*** Pertinently, para Nos. 11,14 and 16 read thus :-

> *"11. The general principle, which also manifests itself in Section 17 of the Limitation Act, is that every person is presumed to know his own legal right and title in the property, and if he does not take care of his own right and title to the property, the time for filing of the suit based on such a right or title to the property is not prevented from running against him. The provisions of Section 17(1) embody fundamental principles of justice and equity, viz. that a party should not be penalised for failing to adopt legal proceedings when the facts or the documents have been wilfully concealed from him and also that a party who had acted fraudulently should not be given the benefit of limitation running in its favour by virtue of such frauds.9 9 Pallav Sheth v. Custodian and Others, (2001) 7 SCC 549 However it is important to remember that Section 17 does not defer the starting point of limitation merely because the defendant has committed a fraud. Section 17 does not encompass all kinds of frauds, but*

specific situations covered by clauses (a) to (d) to Section 17(1) of the Limitation Act. Section 17(1)(b) and (d) encompass only those fraudulent documents or acts of concealment of documents which have the effect of suppressing knowledge entitling the party to pursue his legal remedy. Once a party becomes aware of antecedent facts necessary to pursue legal proceedings, the period of limitation commences.

14. The word 'diligence' read with the word 'reasonable' in the context of Section 17(1) of the Limitation Act is subjective and relative, and would depend upon circumstances of which the actor called upon to act reasonably, knows or ought to know. Vague clues or hints may not matter. Whether the plaintiff/applicant had the means to know the fraud is a relevant consideration. It is manifest that Section 17(1) of the Limitation Act does not protect a party at fault for failure to exercise reasonable diligence when the circumstances demand such exercise and on exercise of which the plaintiff/applicant could have discovered the fraud. When the time starts ticking subsequent events will not stop the limitation. The time starts running from the date of knowledge of the fraud/mistake; or the plaintiff/applicant when required to exercise reasonable diligence could have first known or discovered the fraud or mistake. In case of a concealed document, the period of limitation will begin to run when the plaintiff/applicant had the means of producing the concealed document or compelling its production.

16. Rules of pleadings relating to fraud and exemption from law of limitation are set out in Order 6 Rule 4 and Order 7 Rule 6 of the Code. Order 6 Rule 4 lays down that in all cases where a party pleading relies upon fraud, particulars with respect to the date and item, if necessary, shall be stated in the pleadings. The fraud as alleged in the plaint must state those facts which together taken as a whole, if proved, would show and establish fraud. Pleading of fraud should be conspicuous and palpable, and should not be predicated on mere suspicion and conjecture. Of course, the court, at the initial stage when deciding an application under clause (d) to Order 7 Rule 11 has to proceed under demurrer, and therefore, should accept the facts as alleged in the plaint, but can in a given case draw irrefutable inferences from the facts stated…."

19. Apparently, pleading in the plaint as to cause of action is nothing but clever drafting by using the word fraud and an attempt to bring suit within limitation by invoking Section 17 of the Limitation Act.

20. In the result, this Court holds that suit of the plaintiff is clearly barred by limitation based on fictitious cause of action and vexatious in nature. In the result, Civil revision application deserves to be allowed. Hence, following order :

O R D E R

[I] Civil revision application is allowed;

[ii] Impugned order dated 8.4.2024 passed by Civil Judge (Senior Division) Sangamner, below Exh.13 in Special Civil Suit No. 126 of 2023 is hereby quashed and set aside :

[iii] Application filed by defendants below Exh.13 for rejection of plaint stands allowed;

[iv] Consequently, plaint in Special Civil Suit No. 126 of 2023 pending before Civil Judge (S.D.), Sangamner stands rejected under Order 7 Rule 11 of CPC.

[v] In the circumstances, there shall be no orders as to costs.

[S.G. CHAPALGAONKAR, J]

At this stage, learned advocate appearing for the respondents submit that operation of this order be stayed for six weeks since respondents wish to approach the Honourable Supreme Court.

Considering the submissions advanced, operation of this order shall be kept in abeyance for a period of six weeks from today.

[S.G. CHAPALGAONKAR, J]

grt/-