



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

CIVIL REVISION APPLICATION NO. 156 OF 2025

Naba Developer Private Ltd. Hingoli
Through its Director
Khalil Ahmed Abdul Quddus Qureshi .. Petitioner

Versus

Muzammil Isa Khan and others .. Respondents

Shri H. I. Pathan, Advocate for the Petitioner.
Shri S. S. Gangakhedkar, Advocate for the Respondent Nos. 1
and 2.

CORAM : SHAILESH P. BRAHME, J.
DATE : 08TH AUGUST, 2025.

FINAL ORDER :

- . Heard the contesting parties.
2. Being aggrieved by order of rejection of application Exhibit 57 filed under Order VI Rule 11 of the Code of Civil Procedure (for the sake of convenience and brevity hereinafter referred as to the 'C.P.C.') in R.C.S. No. 225 of 2024, petitioner has preferred present revision application. The petitioner is original defendant No. 12 in the suit filed by the respondent Nos. 1 and 2 - original plaintiffs for administration of estate, declaration and injunction.
3. The respondent Nos. 1 and 2 – original plaintiffs, are real brothers of the defendant No. 12 Ata Khan. They are sons of Isa

Khan. It's their case in the plaint that land Sy. No. 164 (gut No. 511) was belonging to Ahmed Khan Amir Khan, grandfather. He had three sons namely Abdul Raheman Khan, Khalandar Khan and Isa Khan. There was already separation of shares. Accordingly the share allotted to Isa Khan devolved on the respondent Nos. 1, 2 and respondent No. 12. The respondent No. 3 Khalandar Khan was allotted 1H 73R from land gut No. 511. However, in the record of rights no division of shares of Isa Khan and Khalandar Khan was shown. The respondent Nos. 1 and 2 and the respondent No. 12 are in possession of their shares. The respondent No. 3 – Khalandar Khan denied rights of the plaintiffs, which was disclosed through his written statement filed in R.C.S. No. 66 of 2023. It is further contended that the respondent No. 3 alienated 1H 73R to present petitioner, without any authority. The purchasers are changing the nature of the suit property and obstructing possession, hence R.C.S. No. 225 of 2024 was filed by the respondent Nos. 1 and 2.

4. The suit was contested by the defendants. The petitioner submitted application Exhibit 57 U/O VII Rule 11 of the C. P. C. The same was contested by the respondent Nos. 1 and 2 – plaintiffs. By order dated 02.09.2024, application is rejected, which is under challenge.

5. Learned counsel for the petitioner submitted that no cause of action is made out from the plaint. The claim is under valued because plaintiffs are challenging sale deed, but failed to pay

court fees on the valuation of the land. It is further contended that suit is barred by time. There was separation in the year 1993 and the sharers alienated their part long back. It is further contended that due to bar of Sec. 158 of the Maharashtra Land Revenue Code (for short 'M.L.R. Code'), suit is not maintainable. It is submitted that a frivolous suit is filed, when plaintiffs already got their shares. Impugned order is patently illegal.

6. Per contra, Mr. Shailendra Gangakhedkar appearing for the respondent Nos. 1 and 2 – plaintiffs supports the impugned order. He would submit that though there was division of the shares in the family, 7/12 extract showed jointness of share of Isa Khan and Khalandar Khan. The cause of action is specifically spelt out in the plaint itself. It is contended that the plaintiffs are not seeking reopening of the partition, but claiming its implementation. It is further submitted that plaintiffs are the third parties to the sale deed and they are not seeking cancellation. Bar U/Sec. 158 of the M. L. R. Code is not attracted.

7. I have gone through the plaint and the documents annexed along with the plaint, which are part of paper book. Impugned order shows that the objection for rejection of the plaint on the ground of payment of court fees, bar of limitation and bar of jurisdiction are dealt with separately by assigning reasons.

8. Bare reading of the plaint discloses cause of action in para

Nos. 6, 9 to 11, 15 and 16. The submission that plaintiffs are not entitled to claim relief of declaration is different than absence or illusory cause of action. If the plaintiffs are not entitled to any relief that would be part of scrutiny during trial. I do not find that cause of action is illusory or it's case of cleaver drafting without there being any cause.

9. The respondent Nos. 1 and 2 – plaintiffs are challenging sale deed executed by the respondent No. 3. The relief claimed is that the sale deed is not binding upon them. They are the third persons and, therefore, they are not required to pay court fees like that of relief of cancellation of sale deed. The respondent Nos. 1 and 2 have rightly referred to the judgments of the Supreme Court and this Court at Nagpur Bench in the matters of Suhridsingh @ Sardool Singh Vs. Randhir Singh and others reported in (2010) 12 SCC 112 and Niraj Narendra Walle Vs. Vijay Narendra Walle and others reported in 2017 (4) Mh. L. J. 402.

10. The plaint is sought to be rejected on the ground of limitation also. The point of limitation is mixed question of law and facts. The respondent Nos. 1 and 2 – plaintiffs are not claiming reopening of the division occurred in the family. The tenor of the plaint is that according to division or separation three sons got shares, but the respondent No. 3 is not giving separate share to the plaintiffs and their brother. Plaint cannot be rejected on the ground of limitation unless there is full fledged trial. Learned counsel for the petitioner adverted my attention

to prayer clause No. 4 of the plaint, which is stated to be barred by Sec. 158 of the M. L. R. Code. Plaintiffs are not challenging any order passed by the authority under the M. L. R. Code. The relief which is sought cannot be granted under the M. L. R. Code. The submission of the petitioner cannot be accepted.

11. For the reasons assigned above, I find no substance in the civil revision application. The civil revision application is rejected. There shall be no order as to costs.

[SHAILESH P. BRAHME J.]

bsb/Aug. 25