



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

CIVIL REVISION APPLICATION NO. 145 OF 2025

Budha S/o Bandu Sonar,
Age : 87 Years, Occu. : Retired
Government Servant,
R/o Plot No. 8, Suyog Nagar,
Vidyanagari, Deopur, Dhule. .. Applicant

Versus

Sumanbai Sudhakar Sonar
Since deceased through L.Rs.

1. Jaywant S/o Sudhakar Sonar,
Age : 54 Years, Occu. : Business,
R/o Plot No. 33, Datta Colony,
Near Poultry Farm,
Swami-narayan road, Deopur,
Dist. Dhule.
2. Shashikant S/o Sudhakar Sonar,
Age : 50 Years, Occu. : Business,
R/o Plot No. 33, Datta Colony,
Near Poultry Farm,
Swami-narayan road, Deopur,
Dist. Dhule.
3. Minal W/o Chandrashekhar Chavan,
Age : 57 Years, Occu. : Housewife,
R/o Plot No. 83, Tirupati Nagar,
Near G.T.P. Society, Deopur,
District Dhule.
4. Chhaya w/o Ravindra Sonar,
Age : 52 Years, Occu. : Housewife,
R/o Barack No. 72, Room No. 12,
Vasantrao Chowk, Near Anil

Gulbhamun, Ulhasnagar No. 1.

.. Respondents

Shri Pratp P. Mandlik, Advocate for the Applicant.

Shri Amol S. Sawant, Advocate for the Respondent Nos. 1 to 4.

CORAM : SHAILESH P. BRAHME, J.

DATE : 11TH DECEMBER, 2025.

ORAL JUDGMENT :-

. Heard both sides finally.

2. This civil revision application is directed against the order dated 09.06.2025 passed below Exhibit 11 in R.C.S. No. 175 of 2023 rejecting application preferred by the applicant under Order VII Rule 11 of the Code of Civil Procedure (for the sake of brevity and convenience hereinafter referred as to the "C.P.C.").

3. Learned counsel for the applicant submits that suit filed by the respondents for partition and separate possession of the suit property is vexatious in the absence of any relief in respect of sale deed dated 11.06.1980. It is submitted that the cause of action is outcome of cleaver drafting to circumvent and to overcome the law of limitation. It is further submitted that Sumanbai died in the year 2018 and till then no attempt was made to file the suit. It is further submitted that going by averments of the plaint in the year 2007 only the respondent had knowledge of the alleged bogus instrument executed in the year 1980 and thereafter also parties have been continuously prosecuting the litigation on the revenue side. Hence the claim

in the suit is in fact barred by limitation. It is submitted that in order to overcome the sale deed dated 11.06.1980 the prayer of partition has been incorporated. It is contended that the Trial Court committed patent illegality and did not consider the relevant aspect of the matter.

4. Per contra, learned counsel Mr. Sawant for the respondent submits that the limitation is mixed question of facts and law and it cannot be decided at the nascent stage. He would submit that the document executed in the year 1980 is palpably bogus because Sumanbai did not sign the document. The parties are litigating before the revenue side. It is further submitted that admittedly the plot was purchased jointly. Both the parties incurred loan and repaid also. My attention is adverted to written statement and it is tried to be submitted that if the suit property was purchased by the applicant, there was no occasion to incur loan by the respondents and further to repay it. The theory of the applicant is unacceptable.

5. Applicant has placed reliance on the judgment of the Supreme Court in the matter of Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by L.Rs. reported in *AIR 2019 SC 1430*. Respondents have relied on the judgment of the Supreme Court in the matter of Mongia Realty and Buildwell Pvt. Ltd. Vs. Manik Sethi reported in *(2022) 11 SCC 572*.

6. I have considered rival submissions of the parties. The suit

is filed for partition and possession only claiming half share in the suit property. The suit property is said to have been purchased by these siblings jointly and for that purpose they had incurred loan also. In para No. 5 of the plaint, it is pleaded that on the basis of bogus document of 1980, applicant tried to eliminate the respondent's name in the year 2007. In the same paragraph the litigation on the revenue side regarding recording of the name against the suit property has been referred to. In paragraph No. 6A it is stated that respondent – Sumanbai did not sign sale deed dated 11.06.1980 and applicant attempted to delete her name in order to usurp the property in question.

7. The meaningful reading of the plaint discloses that plaintiffs were aware of the sale deed executed on 11.06.1980. In the year 2007, respondents had knowledge of the document. Thereafter parties have been litigating on the revenue side and the matter is still subjudice before the Deputy Director of Land Records. Under such circumstances the respondents – plaintiffs ought to have challenged sale deed dated 11.06.1980. The suit is filed in the year 2023. The respondent – Sumanbai died in the year 2018. The suit is filed after her death by her legal heirs.

8. The suit is filed for the relief of partition and separate possession. The suit for challenging sale deed dated 11.06.1980 is clearly barred by limitation. Instead of challenging the sale deed strategically only relief of partition is claimed, which is cleaver drafting and an attempt to circumvent the provisions of

law.

9. I have gone through para Nos. 6, 6A and 8 of the plaint, which are about the cause of action. The cause of action is shown to be the attempt made by the applicant to delete the name of the respondent. Apparently the same is illusory and articulated. Instead of challenging the sale deed the suit is filed to overcome the legal impediment. Only prayer is made to the extent of partition and separate possession. I am of the considered view that present case is squarely covered by the parameters laid down by the Supreme Court in the matter of Rajesh Bajoria and others Vs. Hemant Kumar Jalan and others reported in (2022) 12 SCC 641.

10. The respondents waited for considerable period instead of challenging the sale deed, suit for partition is filed. The suit is vexatious and bogus and the plaint needs to be nipped in the bud. The aspects referred above are totally overlooked by the Trial Court. It is patently illegal. Learned Judge failed to exercise jurisdiction vested in it.

11. Learned counsel for the respondents has relied on the judgment of the Supreme Court Mongia Realty and Buildwell Pvt. Ltd. Vs. Manik Sethi (supra). I have gone through paragraph No. 15 of the judgment, which inter alia refers to the judgment of the Supreme Court by referring to para Nos. 51 and 52. The facts are distinguishable. It is not a case that trial Court was determining the issue of limitation as a preliminary issue. The matter in hand pertains to Order VII Rule 11 of the C. P. C. and

the illusory cause of action to overcome the legal impediment. This judgment would not enure to the benefit of the respondents.

12. Learned counsel for the applicant relied on the judgment of the Supreme Court in the matter of Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by L.Rs. (supra). In that case also instead of challenging registered gift deed, knowledge of which was attributable to the plaintiffs, the suit for declaration was filed to circumvent the legal provisions. Under those facts Supreme Court allowed appeal and quashed order passed by the High Court in refusing to reject the plaint. It is apposite to produce following paragraph of the judgment.

“7.1 At this stage, it is required to be noted that, as such, the plaintiff has never prayed for any declaration to set aside the gift deed. We are of the opinion that such a prayer is not asked cleverly. If such a prayer would have been asked, in that case, the suit can be said to be clearly barred by limitation considering Article 59 of the Limitation Act and, therefore, only a declaration is sought to get out of the provisions of the Limitation Act, more particularly, Article 59 of the Limitation Act. The aforesaid aspect has also not been considered by the High Court as well as the learned trial Court.”

I am inclined to uphold the submissions made by the applicant.

13. Learned counsel for the respondents has pointed out that the application Exhibit 11 is not in fact U/O VII Rule 11 of the C. P. C. but it refers to Order VII Rule 6 of the C. P. C. The learned counsel for the respondents is right that it is not U/O VII Rule 11 of the C. P. C. for which the parties to the litigation were fighting, which is also reflected in the impugned order. But the

entire tenor of the submissions made by the parties before the Trial Court as well as before this Court are in respect of Order VII Rule 11 of the C. P. C. It is trite law that wrong quotation of provision would not frustrate the proceedings or the relief.

14. Learned counsel for the respondents referred to para No. 7 of the written statement. The cardinal principle while exercising jurisdiction U/O VII Rule 11 of the C. P. C. is that averments of the plaint and documents produced along with it have to be taken into account. The defence and the pleadings in the written statement are extraneous for the inquiry in question.

15. For the reasons stated above civil revision application deserves to be allowed. I therefore pass following order.

O R D E R

- A. The civil revision application is allowed.
- B. Impugned order dated 09.06.2025 passed below Exhibit 11 in R.C.S. No. 175 of 2023 is quashed and set aside.
- C. Plaint in R.C.S. No. 175 of 2023 stands quashed.

[SHAILESH P. BRAHME J.]