

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

27 CRA NO. 23 OF 2024

GOVIND BHAGAJI LAKHE AND ANOTHER  
VERSUS  
SHANTABAI SHANKAR SHINDE AND OTHERS

...  
Advocate for the Applicants : Ms. Savita G. Mapari  
Advocate for Respondent Nos. 1 to 4 : Mr. Ramesh R. Imale  
...

CORAM : S. G. CHAPALGAONKAR, J.

Dated : 14.01.2025

PER COURT :-

1. Heard the learned Advocates appearing for the respective parties.
2. The applicants are the original defendant Nos. 9 and 10 in Regular Civil Suit bearing No. 95 of 2015 filed by respondent Nos. 1 to 4 seeking relief of partition and separate possession in respect of the suit property. The applicants /defendants filed an application below Exh. 79 seeking rejection of the plaint by invoking the provisions of Order VII Rule 11 of

the Code of Civil Procedure, on the ground that the suit is barred by limitation and the plaintiffs have no cause of action to file the suit. Similarly the suit is not properly valued as there were numerous sale deeds in respect of the suit property not subjected to challenge in the suit.

3. The learned trial Court vide impugned order dated 31.08.2023 rejected the application.

4. Smt. Mapari, learned Advocate appearing for applicants submits that the plaintiffs are the daughters of one Dama Rama, who was the owner of the suit lands. After the death of Dama Rama his sons inherited the property as per mutation entry No. 570 dated 22.08.1989, since then sons of Dama Rama transferred the properties to number of persons under various sale deeds. The plaintiffs shown fictitious cause of action of the year 2015 and sought relief of partition and separate partition without challenging those sale deeds. She would further submit that the dispositions of the properties which were made prior to 2004 cannot be subjected to challenge in view of the proviso to Clause 1 of Section 6 of the Hindu

Succession Act. She would therefore urge to set aside the impugned order and to reject the plaint under Order VII Rule 11 of the Code of Civil Procedure.

5. Per Contra, Mr. Imale, learned Advocate appearing for the respondents/plaintiffs would submit that the plaintiffs are the daughters of Dama Rama, who was the original owner. Upon death of Dama Rama, his sons mutated their names in the revenue record behind back of the plaintiffs and then indulged in various transactions of the property without effecting partition of the land. He would submit that even assuming that the plaintiffs have no right to inherit the ancestral property they would be certainly entitled to claim share in the property falling to the share of their father. Therefore, all the issues raised needs to be tried and decided in the suit. He would further point out that suit has been instituted in the year 2015. Written Statement had been filed at the same time. Now suit has been substantially progressed and after recording the evidence the plaintiffs it is for recording the evidence of the defendants.

6. An application for rejection of the plaint is filed at delayed stage. The trial Court after considering the rival submissions rightly refused to entertain the application seeking rejection of the plaint at this stage. He would therefore, urged to reject the Civil Revision Application.

7. Having considered the submissions advanced, it is apparent that plaintiffs are the daughters of Dama Ram. They have instituted suit seeking relief of partition and separate possession in respect of the suit property. Eventually applicants seek declaration that the sale deeds executed by defendant Nos. 1 to 7 in favour of defendant Nos. 8 to 11 are not binding on their rights. The bare reading of the contents of the plaint shows that the plaintiffs being the daughters of Dama Rama are entitled to claim share in suit properties at least in the share of deceased Dama Rama. The plaintiffs have pleaded that they were un-aware about disposition of properties made by defendant Nos. 1 to 7 in favour of defendant nos. 8 to 11. In that view of the matter, prima-facie the plaintiffs would have cause of action to file suit after getting knowledge of such transfers. Since the prayer in the suit is for partition and

separate possession, plaintiffs may ignore intervening sale deeds made ignoring their rights.

8. It is trite that while considering the application under order VII Rule 11 of the CPC, only contents of the plaint are relevant. The defence, if any, put forth by way of Written Statement is not relevant while deciding the application seeking rejection of the plaint. From the plain reading of the plaint alongwith the documents annexed thereto, prima-faice, no conclusion can be drawn that the suit is either barred by the limitation or the cause of action shown in the plaint is fictitious or illusory. All these issues are triable and require decision at the conclusion of the trial.

9. The trial Court has rightly applied the proposition of the law espoused by the Hon'ble Supreme Court of India in **Dahiben Vs. Arvinbhai Kalyanji Bhanusali**, AIR 2020 SC 3310, so also the judgment of this Court in **Gaurav Vs. Tukaram – 2018 (4) Mh.L.J. 709**.

10. The learned Advocate appearing for the applicants

seeks to rely upon the law laid down by the Delhi High Court in the case of **Rakhi Gupta Vs. Zahoor Ahmad and Ors reported in CS (05) 1147 of 2012 dated 29.11.2012**, on the point of amended provisions of the Hindu Succession Act to contend that the disposition of the property made prior to 2004 cannot be subjected to challenge, on the basis of rights accrued in favour of the daughters. There cannot be dispute as to the proposition of law as espoused by Delhi High Court. However, even assuming that the plaintiffs have no right as per amended provisions to claim the partition in coparcenary property they may claim right in the share of their father that require consideration in the suit. In that view of the matter, no jurisdictional error can be found in the impugned order. The Civil Revision Application sans the merit, hence is dismissed.

**( S. G. CHAPALGAONKAR )**  
**JUDGE**