

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.539 OF 2024**

Laxman Kondiba Navghane	...	Applicant
versus		
Chandrakalabai Kondiba Navghane and Ors.	...	Respondents

Mr. Rushikesh Barge, for Applicant.

CORAM: N.J.JAMADAR, J.

DATE : 6 JANUARY 2025

P.C.

1. Heard the learned Counsel for the Applicant.
2. The legality, propriety and correctness of an order dated 23 February 2024 passed by the learned Civil Judge, Jr. Division, Satara in Regular Civil Suit No.95 of 2021 on an application (Exhibit 33), for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908, whereby the said application came to be rejected, has been assailed in this revision application.
3. Kondiba Navghane, the father of the Petitioner and Respondent Nos.2 and 3 and the husband of the Respondent No.1, was allotted land bearing Survey Nos.100/2, 100/3 and 449/2/2 at Village Kidgaon, Taluka and District Satara, more particularly described in paragraph 1A of the plaint, as a project affected person, for the rehabilitation purpose. Kondiba passed away on 10 May 1994. The name of the Applicant/Defendant No.1 was initially mutated

to the suit lands described in paragraph 1A as Karta of the joint family.

4. The Plaintiffs alleged, the applicant/Defendant No.1 fraudulently got the condition of obtaining the permission of the government for transfer of the suit lands described in paragraph 1A, relaxed in the year 2013 on the strength of the power of attorney purportedly executed by Kondiba Navghane who had passed away in the year 1994 itself. Thereafter, Defendant Nos.1 and 2 executed an Exchange Deed to exchange lands described in paragraph 1A with paragraph 1B of the plaint. Proceedings ensued before the revenue authorities. Asserting that on 14 February 2021, Defendant No.1 caused obstruction to the possession of the Plaintiffs/Respondent Nos.1 to 3 over the suit lands, a suit came to be instituted for partition and separate possession of the suit lands and the declaration that the Exchange Deed dated 1 February 2014 was not binding on the share of the Plaintiffs and for the consequential relief of injunction.

5. Applicant / Defendant No.1 preferred an application for rejection of the plaint under Order VII Rule 11 of the CPC, on multiple grounds. By the impugned order, the learned Civil Judge was persuaded to reject the application holding that a clear cause of action to institute a suit for partition was made out and the relief of declaration qua the Deed of Exchange was incidental. Prima facie, it did not appear that the suit was barred by law of limitation and the issue of limitation was also required to be adjudicated.

6. Mr. Barge, learned Counsel for the Applicant, submitted that a clear case of bar of limitation was made out. On the own showing of the Plaintiffs, they had the knowledge of the Deed of Exchange (executed in the year 2014), at least in the year 2016 when the proceedings were initiated before the revenue authorities. Thus, the suit is ex-facie barred as the period of limitation for a suit for declaration under Article 58 of the Limitation Act, 1963, is three years and the time begins to run when the right to suit first accrues. As the suit is ex-facie barred by limitation, the Court ought to have rejected the plaint under Order 7 Rule 11(d) of the Code.

7. Reliance was placed on the decisions of the Supreme Court in the cases of C.S.Ramaswamy V/s. V.K.Senthil and Ors.¹ Sree Surya Developers and Promoters V/s. N. Sailesh Prasad and Ors.² Shri Mukund Bhavan Trust and Ors. V/s. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and Anr.³ wherein the Supreme Court enunciated that if an illusion of a cause of action is created by clever drafting and the suit is hopelessly barred by law of limitation, the plaint can be rejected under Order VII Rule 11 of CPC.

8. There can be no quarrel with the proposition that, if a clear case of bar to the suit, even if that bar is of limitation, is made out, the Court can and must exercise jurisdiction to reject the plaint as the object of Order VII Rule 11(d) is

1 2022 AIR (SC) 4724

2 2022 AIR (SCW) 1031

3 2024 SCC Online SC 3844

to nip in the bud the proceedings which is ex-facie barred by law. However, in the facts of the case, such an irresistible inference cannot be drawn on the basis of meaningful reading of the averments in the plaint, which only can be looked into for determining whether the suit is barred by any provision of law.

9. The Deed of Exchange seems to have been executed by Defendant Nos.1 purportedly in the capacity of the Karta of the joint Hindu family. It is not a case that the Plaintiffs were the parties to the said Deed of Exchange. There are averments in the plaint that after the demise of Kondiba, to whom the suit lands, described in paragraph 1A of the plaint, were allotted as a project affected person, the condition of alienation sans permission of the government was got relaxed by making an application in the capacity of the power of attorney of Kondiba, who had already passed away.

10. In the backdrop of the averments in the plaint, the learned Civil Judge committed no error in observing that, prima facie, the principal prayers in the suit appeared to be that of partition and separate possession, and, thus, the suit, from the averments in the plaint, did not appear to be barred by limitation.

11. No interference is, thus, warranted in the impugned order.

12. Hence, the Civil Revision Application stands rejected.

(N.J.JAMADAR, J.)