



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.3 OF 2025**

Tanveer P. Inamdar ... Applicant
versus
Vithabai @ Malati Vasantrao Mandale and Ors. ... Respondents

Mr. Pralhad Paranjape with Ms. Manish Kelkar, for Applicant.
Mr. Jaydeep Deo, for Respondent No.1.

CORAM: N.J.JAMADAR, J.

DATE : 20 JANUARY 2025

P.C.

1. Heard the learned Counsel for the parties.
2. The Applicant/Defendant No.6 assails the legality, propriety and correctness of the common order passed by the learned Civil Judge, Pune, whereby the application preferred by Defendant Nos.6 and 7 for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908, came to be rejected.
3. Respondent No.1 instituted a suit for declaration and perpetual injunction, asserting that the property bearing Survey No.56, Hissa No.3B, CTS No.1853 admeasuring 1H and 34 R (the suit property) is the joint family property of the Plaintiff and Defendant Nos.1 to 4. The suit property is the ancestral property. Defendant Nos.1 to 3 are the brothers and Defendant No.4 is the sister of the Plaintiff. There has not been partition of the suit property by metes and bounds. The suit property continues to be the undivided joint

family property of the Plaintiffs and Defendant Nos.1 to 4. Defendant No.3 had sold the portion of the suit property in far excess of undivided interest of Defendant No.3, unauthorizedly and illegally, under the purported Sale Deed dated 21 October 1997 to Defendant No.5. Defendant No.4 has also sold a portion of the suit property in excess of her undivided interest in favour of Defendant No.6. Defendant Nos.5 and 6 have, in turn, executed a Development Agreement with Defendant No.7 on 13 May 2023. Thus, a suit for declaration that the Instrument dated 21 October 1997 executed by Defendant No.3 in favour of Defendant Nos.5 and 6 and the instrument dated 21 October 1997 executed by Defendant No.4 in favour of Defendant Nos.5 and 6 and the Development Agreement dated 13 May 2023 executed by Defendant Nos.5 and 6 in favour of Defendant No.7 are not binding on the share of the Plaintiff in the suit property and the consequential injunctive reliefs.

4. The applicant/Defendant No.7 preferred an application for rejection of the plaint raising multiple grounds, including the bar of limitation, absence of cause of action, bar under order II Rule 2 of the Code, suppression of material facts and incorrect valuation of the suit claim.

5. The learned Civil Judge was persuaded to reject the application observing that the none of the grounds raised on behalf of Defendant No.7 merited rejection of the plaint, invoking provisions contained in Order VII Rule

11 of the Code. The learned Judge, inter alia, explicitly recorded that, from a meaningful reading of the plaint, the cause of action was evident and the suit did not appear to be barred by any provisions of law, including law of limitation.

6. Mr. Paranjape, learned Counsel for the Applicant, would urge that the learned Civil Judge committed a manifest error in rejecting the application for rejection of the plaint. The very averments in the plaint, according to Mr. Paranjape, indicate that the suit is ex-facie barred by limitation. It was submitted that, undoubtedly, the limitation is a mixed question of fact and law. However, where from the averments of the plaint, it becomes explicitly clear that the suit is ex-facie barred by limitation and life is sought to be infused in such a suit, by clever drafting, it is the duty of the Court to nip the said suit in the bud.

7. Mr. Paranjape further submitted that there is no absolute bar in the Court examining the aspect of bar of limitation at a nascent stage and rejection of the plaint on that count, if the suit, from the averments in the plaint, appears to be hopelessly barred by limitation.

8. To buttress aforesaid submission, Mr. Paranjape placed reliance on the decisions of the Supreme Court in the cases of Sukhbiri Devi and Ors. V/s. Union of India and Ors.¹ and Shri Mukund Bhavan Trust and Ors. V/s.

1 2022 SCC Online SC 1322

Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and Anr.².

9. In the case of Sukhbiri Devi and Ors. (supra), the Supreme Court enunciated that the issue of limitation can be framed and determined as a preliminary issue under Order XIV Rule 2(2)(b) in a case where it can be decided on admitted facts.

10. In the case of Shri Mukund Bhavan Trust and Ors. (supra), the Supreme Court observed that 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. The spirit and intention of Order VII Rule 11(d) of the Code 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.

11. There can be no dispute with the proposition that, in a given case, where from the very averments in the plaint, it becomes explicitly clear the suit is hopelessly barred by limitation, the Court may be justified in exercising the power to reject the plaint under Order VII Rule 11(d) of the Code. In contradistinction to this, where the bar of limitation raised on behalf of the Defendant is such that it warrants investigation into the facts, as limitation is a being mixed question of fact and law, resort to the provisions contained in

2 2024 SCC Online SC 3844

Order VII Rule 11(d) of the Code may not be justified.

12. In the instant case, Mr. Paranjape invited attention of the Court to the averments in paragraph 16 of the plaint, wherein the Plaintiff has asserted that the cause of action arose on different dates right from 25 February 1966 when the name of the Plaintiff was deleted from the record of right of the suit property, purportedly on the premise that the Plaintiff had relinquished her share. Therefore, looked at from any perspective, according to Mr. Paranjape, the suit is ex-facie barred by limitation.

13. First and foremost, it is imperative to note that the relationship between the parties is not in contest. Nor the right of the Plaintiff/Respondent No.1 to inherit the suit property. The very premise of the sale in favour of Defendant Nos.5 and 6 was that in the year 1997, the name of the Plaintiff, sister of Defendant Nos.1 to 3, was deleted from the record of right on the basis of purported relinquishment.

14. Evidently, there is no registered instrument to evidence the release or relinquishment of the share of the Plaintiff in the suit property. Reliance on the prima facie self-serving recitals in the instruments executed by Defendant Nos.3 and 4 in favour of Defendant Nos.5 and 6 are of no assistance. Once this position is conceded, the principle of unity of possession and community of interest comes into play. In the absence of partition of the suit property by metes and bounds, the right of the plaintiff in the suit property can hardly be

questioned. In the alternative, a clear case of ouster would be required to be established, which is essentially a matter rooted in facts. Therefore, the learned Civil Judge does not seem to have committed such error which is required to be corrected in exercise of revisional jurisdiction.

15. The application, thus, stands rejected.

16. No costs.

(N.J.JAMADAR, J.)