

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.75 OF 2025

Damodar Bhandari and Others ...Applicants

vs.

Vinod Maruti Bachhe ...Respondent

Mr. Drupad Patil a/w. Mr. Namitkumar Pansare, for the Applicants.

CORAM : N. J. JAMADAR, J.

DATE : FEBRUARY 17, 2025

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P.C:

1. Heard the learned counsel for the parties.
2. This revision application is directed against an order dated 3rd September, 2024 passed by learned Civil Judge Senior Division, Vadgaon-Maval on an application (Exh.46) preferred by the applicants /defendant Nos. 4 and 5 for rejection of the plaint.
3. Mr. Drupad Patil, learned counsel for the applicants strenuously submitted that the plaintiffs are guilty of suppression of facts and documents which, in turn, render the suit claim blatantly false and vexatious. The suit, which is based on false and fabricated documents, of which there is no reference whatsoever in the correspondence exchanged between the parties and the proceedings that had ensued earlier, is liable to be rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908. Mr. Patil placed reliance on a Division Bench judgment of this Court in the

case of **Mudhit Madanlal Gupta vs. Mazher Khan Farooqui and Anr.**¹ wherein it was enunciated that in the facts of the said case, “the appellant in fact by skillful draftsmanship camouflaged the material facts and in a cleverly drafted and articulated plaint, pleaded an illusionary cause of action which was ex facie otherwise barred by law, when the law would mandate that the appellant was duty bound to disclose all material facts as Order VI Rule 2(1) would provide. Thus, this is not only a case of clever and skillful drafting but a case wherein the appellant indulged in suppression. Therefore, the trial Court was justified in rejecting the plaint as being barred by limitation.”

4. From the tenor of the plaint, which is required to be read as a whole, along with the documents annexed thereto, at the stage of consideration of the application in rejection of the plaint, it appears that the case of the plaintiff is that the defendant Nos. 1 to 3 who have an undivided interest in the suit plots described in paragraph 1(vi) of the plaint, had initially entered into an agreement to sale their undivided interest in favour of plaintiff No. 1 and Ram Raghunath Ghanwat on 5th March, 2012. Part consideration was parted with under the said agreement. The said transaction, however, did not materialize as Ram Ghanwat backed off. The defendant Nos. 1 to 3 refunded the amount. Thereupon, the

1 2022 SCC OnLine Bom 7183.

defendant Nos. 1 to 3 executed another agreement for sale in favour of the plaintiff to convey their undivided interest in the suit property and portion of the property bearing Survey No. 189/2, Kusgaon (Bu.), on 19th November, 2012. The defendant Nos. 1 to 3 received huge consideration under the said agreement. Yet, the defendant Nos. 1 to 3 executed a conveyance in respect of their undivided interest in some of the suit plots in favour of defendant Nos. 4 and 5. Hence, the suit for specific performance of the contract for sale dated 19th November, 2012 and declaration that the sale dated 10th July, 2015 executed by defendant Nos. 1 to 3 in favour of defendant Nos. 4 and 5 is illegal, null and void and the consequential reliefs.

5. The thrust of the submission of Mr. Patil was that the said agreement for sale dated 19th November, 2012 of which specific performance has been sought was never disclosed by the plaintiff in the correspondence which was exchanged between the parties. The intrinsic evidence of the said agreement indicates that it is a false and forged document as it does not bear the signatures on each page of the said agreement.

6. The learned Civil Judge was not persuaded to accede to the prayer for rejection of the plaint on the ground of non-disclosure of the material facts, including the correspondence exchanged

between the parties and the proceedings that had ensued.

7. In my view, the learned Civil Judge took a correct view of the matter. In a given case, where it is shown that the suppression of facts was with a view to wriggle out of the bar of limitation or any other statutory bar for institution of the suit, the Court may justifiably consider the said grounds in arriving at a conclusion that the suit is barred by law of limitation or any other statutory provision.

8. In the case at hand, what the defendants contend is that, the cause of action is illusory as the agreement for sale dated 19th November, 2012 did not exist and was not set up earlier. The defendants thus want the Court to draw an inference that the said agreement for sale never existed and has been fabricated to bolster up the case of the plaintiff.

9. Evidently, these questions are rooted in facts. Whether the failure to disclose the said agreement for sale, at an earlier point of time, as alleged, renders a cloud of doubt over the very existence of the said agreement, is a matter for adjudication. At this stage, no inference of absence of cause of action can be drawn on the basis of alleged suppression. Prima facie, the suit appears to be within the statutory period of limitation from the date of execution of the conveyance by defendant Nos. 1 to 3 in favour of defendant Nos. 4

and 5.

10. Resultantly, no interference is warranted with the impugned order in exercise of limited revisional jurisdiction. Hence, the application does not deserve to be entertained.

11. The application stands rejected.

(N. J. JAMADAR, J.)