

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 101 OF 2025

Madhurani Shivkumar Sehgal and anr. ...Applicants

Versus

Salonie Arora, wife of Kamal Arora and ors. ...Respondents

Ms. Jennifer Michael, a/w Alisha Pinto, for the Applicant.
Ms. Garima Sharma, (through VC), a/w Jayesh Mestry and
Anniash Pandey, for the Respondents.

CORAM: N. J. JAMADAR, J.

DATED: 4th MARCH, 2025

ORDER:-

1. Applicants – defendant Nos.1 and 2 have assailed legality, propriety and correctness of an order dated 8th October, 2024 passed by the learned Judge, City Civil Court, in Notice of Motion No.377 of 2012 in Suit No.969 of 2024 (old High Court Suit No.794 of 2010), whereby the Notice of Motion taken out by the defendants for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 came to be rejected.

2. Smt. Vijay Talwar, defendant No.3, was the mother of the plaintiffs. A Memorandum of Family Settlement was executed on 30th October, 1991 amongst the members of Purshotam Lal Talwar, Kashmiri Lal Talwar and Mohinder Talwar families. Defendant No.3 and the plaintiffs represented the Brij Mohal

Talwar Family. Under the said family settlement, Bungalow No.42, the Mall, Amritsar, was allotted to Purshotam Lal Talwar, Kashmiri Lal Talwar, Mohinder Talwar and Smt. Vijay Talwar. The parties agreed to sell the said bungalow and utilize the proceeds to develop the plot of land bearing Plot No.36, Road No.6, Presidency Co-operative Housing Society Ltd., Juhu – Vile Parle. Under the said family settlement, Purushotam Lal Talwar, Kashmiri Lal Talwar and Mohinder Talwar were allotted $\frac{1}{4}$ undivided share in the said Plot No.36 (suit property).

3. The plaintiffs instituted a suit with the assertions that defendant Nos.1 and 2 are in wrongful and illegal possession and occupation of the premises Flat No.4 (suit flat), admeasuring approximately 1058 sq. ft. situated on the suit plot, which was allotted to defendant No.3 after construction of the building thereon. It was, *inter alia*, contended that taking undue advantage of the trust and confidence reposed by defendant No.3 and the plaintiffs in defendant Nos.1 and 2, defendant Nos.1 and 2 had got executed some documents from defendant No.3 and thereby wrongfully occupied the suit flat. The plaintiffs have right, title and interest in the said flat. Thus, the suit for declaration that the plaintiffs and defendant No.3 were the joint owners of the suit flat and defendant Nos.1 and 2

had no right, title and interest therein and they were in the wrongful possession thereof and the Agreement of Lease dated 1st March, 1998 and Irrevocable Power of Attorney dated 1st March, 1998 executed by defendant No.3 in favour of defendant Nos.1 and 2 were void, illegal and inoperative and did not confer any right, title and interest in the suit flat on the defendants and for recovery of possession of the suit flat.

4. Defendant Nos.1 and 2 filed application for rejection of the plaint asserting *inter alia* that defendant No.3 was the sole and absolute owner of the suit flat. The plaintiffs had no right, title and interest therein. Therefore, they could not have instituted the suit as there was no clear right to sue.

5. By the impugned order, the learned Judge, City Civil Court, was persuaded to reject the application observing *inter alia* that the merits of the claim were not required to be delved into and the plaint cannot be rejected for the reason that the case set up by the plaintiffs appears weak. In the facts of the case, the plaint discloses cause of action. Therefore, it cannot be rejected.

6. Ms. Jennifer Michael, the learned Counsel for the applicants, took the Court through the Deed of Family Settlement, Arbitration Award dated 30th September, 1991 under

which the said Plot No.36 came to be allotted to Smt. Vijay Talwar and others, and the letter dated 6th April, 1994 addressed by the Arbitrator wherein Flat No.4 on the 4th Floor came to be allotted to Smt. Vijay Talwar. The thrust of the submission of Ms. Michael was that the plaintiffs being the signatories to the Memorandum of Settlement under which Plot No.36 came to be allotted to Smt. Vijay Talwar, as one of the absolute co-owners, the plaintiffs could not have asserted independent right, title and interest in the suit flat. Moreover, the averments in the plaint would indicate that the plaintiffs were aware of the execution of documents by defendant No.3 in favour of defendant Nos.1 and 2 in the year 2005 – 2006 itself. Thus, the suit, which was instituted in the year 2010 was clearly barred by law of limitation.

7. The documents in question are the purported Agreement to Sale executed in favour of defendant Nos.1 and 2. Deed of Lease dated 6th November, 2001 and a Power of Attorney executed by defendant No.3 in favour of defendant Nos.1 and 2. It was submitted that defendant No.3 had agreed to sell the suit flat to defendant Nos.1 and 2. However, the Sale Deed was not executed. Apparently, the defendants are in possession of the

suit flat under the purported agreements executed by defendant No.3.

8. In the aforesaid backdrop, it has to be ascertained whether a case for rejection of the plaint is made out. First and foremost, the plaintiffs are asserting their proprietary right, title and interest in the suit flat as the co-owners of defendant No.3 Smt. Vijay Talwar. From a bare perusal of the Memorandum of Family Settlement it becomes clear that Smt. Vijay Talwar represented Brijmohan Talwar Branch. Brijmohan Talwar was the husband of defendant No.3 and father of the plaintiffs. Four branches were identified and allotted the property under the Family Settlement. However, that does not imply that the allotment of the property in favour of a member, who represented a particular branch, extinguished the right, title and interest of the other members of the said branch. At best, it would be a smaller co-parcenary in a larger co-parcenary.

9. The rights of the other members of the branch, to which a particular property was allotted in the Family Settlement, amongst the four branches, cannot be simply wished away. Therefore, even if the case of the defendants is taken at par, the question whether Smt. Vijay Talwar was allotted the suit flat absolutely and the suit property did not retain the character of

the joint family property would be a matter for adjudication at the trial. Moreover, Smt. Vijay Talwar has passed away. The plaintiffs being the daughters of Smt. Vijay Talwar are entitled to succeed to the estate of Smt. Vijay Talwar. Thus, in the capacity of the successor in interest of defendant No.3 also the plaintiffs *prima facie* appear to have a cause of action.

10. In the aforesaid view of the matter, the learned Judge, City Civil Court, cannot be said to have committed any error in rejecting the application for rejection of the plaint. No interference is warranted in exercise of revisional jurisdiction.

11. The application, thus, stands rejected.

[N. J. JAMADAR, J.]