

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

CIVIL REVISION APPLICATION NO. 478 OF 2024

Ravindra Mahadeo Rachcha and ors. ...Applicants

Versus

Aarti Ravindra Rachcha and anr. ...Respondents

Mr. Saurabh Natu, for the Applicants.

CORAM: N. J. JAMADAR, J.

DATED: 19th MARCH, 2025

ORDER:-

1. Heard the learned Counsel for the applicants.
2. The challenge in this application is to an order dated 28th November, 2023 passed by the learned Civil Judge, Pune, whereby an application preferred by the applicants for rejection of the plaint under Order VIII Rule 11(1)(d) of the Code of Civil Procedure, 1908, came to be rejected.
3. Respondent No.1 is the wife of applicant No.1 and respondent No.2 is the son of application No.2. The respondents instituted a suit for partition and separate possession of the joint family properties, for cancellation of registered deed executed by applicant No.1 and for perpetual injunction to restrain the applicant No.1, from transferring the joint family properties.

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4. The learned Counsel for the applicants submitted that perusal of the averments in the plaint would indicate that the grandfather of respondent No.2 had initially acquired the properties and out those properties, the other properties were subsequently acquired. Thus, respondent No.2 has no right to seek the partition in the suit properties which are not ancestral properties. It was further submitted that the instruments were executed by applicant No.1 in 1989. Therefore, the suit was also barred by law of limitation.

5. The learned Civil Judge was of the view that the question of character of the suit properties was required to be adjudicated at the trial. The question as to whether the suit was barred by limitation was also a mixed question of law and facts. So far as the challenge to the tenability of the suit on the ground of the bar of limitation qua the gift deed executed by defendant No.1, the trial court was of the view that the plaint cannot be rejected in part.

6. From the perusal of the averments in the plaint, it becomes evident that the plaintiffs have instituted the suit for partition and separate possession of their share in the suit properties asserting that the suit properties are the joint family properties. Indeed, the relief of declaration regarding

the instruments executed by applicant No.1 have been claimed. However, the primary nature of the suit is that of partition and separate possession. What is the character of the properties which devolved upon applicant No.1, after the demise of the grandfather of plaintiff No.2, is a matter for evidence and adjudication at the trial.

7. In these circumstances, the learned Civil Judge does not seem to have committed any error in rejecting the application for rejection of the plaint. No interference is, thus, warranted in exercise of the revisional jurisdiction.

8. Application stands dismissed.

[N. J. JAMADAR, J.]