

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

CIVIL REVISION APPLICATION NO.212 OF 2025

Shriram Shivram Mhatre ... Applicant

V/s.

Shobha Balkrushna Shelke and ors. ... Respondents

Mr. Kaustubh Patil, Advocate for the Applicant.
None for the Respondents.

CORAM : N. J. JAMADAR, J.

DATE : 16th APRIL, 2025.

P.C.:-

1. Heard the learned counsel for the Applicant.
2. The challenge in this application is to an order dated 27th January, 2025 passed by the learned Civil Judge, whereby an application preferred by the Applicant-Defendant No.21 for rejection of the plaint came to be rejected. The Respondents No.1 to 4 instituted a suit for declaration, partition and separate possession of their share in the suit property and the consequential relief of injunction.
3. Initially, the Applicant was not impleaded as a party Defendant to the suit. By an order dated 2nd September, 2023, the Applicant came to be impleaded as a party Defendant.
4. The Applicant preferred an application for rejection of the plaint on the ground that the suit was ex-facie barred by law of limitation *qua* the Applicant, and on account of the amended prayers in the plaint, whereby the Plaintiffs are seeking the reliefs against the release of the enhanced compensation in favour of Defendants No.1 to 10, the suit claim would be

beyond the pecuniary limits of the jurisdiction of the Court of Civil Judge Junior Division.

5. By the impugned order, the learned Civil Judge was persuaded to reject the application. The learned Civil Judge was of the view that, the question as to whether the suit was barred by law of limitation being a mixed question of law and facts warranted adjudication at the trial. As far as the value of the suit claim is concerned, the learned Civil Judge was of the view that, the jurisdiction of the Court would be determined on the basis of the value of the suit property as of the date of the institution of the suit and not the value which gets enhanced by the passage of time.

6. The learned counsel for the Applicant submitted that, on the very date of the institution of the suit, the Plaintiffs were aware of the fact that the name of the Applicant was mutated to the Record of Rights of the suit property. Attention of the Court was invited to the copy of the Record of Rights of the suit land being Gut No. 215/8 which indicates that the name of the Applicant was mutated to the Record of Rights of the suit land. It was, thus, submitted that the Plaintiffs were fully cognizant of the fact that, the Applicant had right, title and interest in the suit property and yet the Applicant was not impleaded as a party Defendant to the suit. The reliefs which are now sought to be claimed against the Applicant are thus barred by law of limitation.

7. I have perused the material on record. The substance of the claim of the Plaintiffs is that the Plaintiffs have a share in the suit properties and they are entitled to a corresponding share in the plot which came to be allotted under 12.5% scheme implemented by CIDCO. Apart from the Defendants No.1 to 10, who originally obtained the benefits of the

scheme, the development authority and others have been impleaded as party Defendant to the suit.

8. In these circumstances, the question as to whether the Plaint can be rejected *qua* Defendant No.21 warrants adjudication. It is well recognized that a plaint cannot be rejected in part *qua* a particular Defendant or particular property. It has to be rejected in the whole. In this context, reliance can be placed on a three judge Bench judgment of the Supreme Court in the case of ***D. Ramchandran vs. R. V. Jankiraman and others***¹.

9. Even otherwise, the question as to whether the suit is barred by law of limitation *qua* the Defendant No.21, in the circumstances of the case, appears to be a mixed question of law and facts. To that extent, the factum of knowledge about the title of the Applicant and the date of such knowledge would be matters for adjudication of the trial. Thus, the learned Civil Judge was justified in taking a view that the question of limitation, in the facts of the case, is a mixed question of law and facts and warrants adjudication at the trial. The learned Civil Judge was also correct in holding that, the jurisdiction of the Court is required to be determined on the basis of the value of the suit claim at the time of the institution of the suit.

10. In any event, all these issues, including the question of limitation and the jurisdiction of the Court to entertain, try and decide the suit can be framed and decided at the final adjudication of the suit.

11. Keeping open all contentions of the parties on these points, the Application stands rejected.

(N. J. JAMADAR, J.)

¹ (1999) 3 Supreme Court Cases 267.