



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.279 OF 2025**

M/s. Kinara Dhaba and Resorts Pvt. Ltd. & Ors. ... Applicants
versus
Smt. Ramlaben Dhirubhai Damani and Ors. ... Respondents

Mr. Pradip Thorat with Ms. Vijaya S. Ingule i/by Mr. Rupesh Mandhane, for Applicants.

Mr. Kamlesh P. Mali, for Respondent Nos.1 and 3.

CORAM: N.J.JAMADAR, J.

**RESERVED ON : 7 OCTOBER 2025
PRONOUNCED ON : 6 NOVEMBER 2025**

JUDGMENT :

1. This Revision Application is directed against the order dated 16 July 2024 passed by the learned Civil Judge, Vadgaon-Maval, whereby the application preferred by the Applicants – Defendant Nos.1 and 2 for the rejection of the plaint under the provisions of Order 7 Rule 11 of the Code of Civil Procedure, 1908 ('the Code'), came to be rejected.

2. Shorn of superfluities, the background facts can be stated as under :

2.1 The Applicant No.1 – Defendant No.1 is a company registered under the Companies Act, 1956. Defendant No.1 is engaged in the hospitality business under the name and style of Kinara Dhaba and Resorts Pvt. Ltd. Applicant No.2 is one of the directors of the Defendant No.1 Company and looks after the management and the affairs of Defendant No.1. Respondent

Nos.1 to 3 – Plaintiffs are the wife, son and daughter, respectively, of Dhirubhai Chotalal Damani. He died intestate on 27 August 2007 leaving behind the Plaintiffs as the legal heirs. The deceased Dhirubhai had purchased 42.4 Are land out of Gat No.102, totally admeasuring 61.4 Are situated at Village Vaksai, Tal Maval, Dist. Pune, under a registered Instrument dated 15 January 1998 ('the suit property').

2.2 The deceased was a businessman and had purchased many properties and estates during his lifetime. The Plaintiffs claimed, during the lifetime of the deceased, they were unaware of the detailed status of the suit property. The Plaintiffs caused search of the revenue record. After becoming aware of the fact that the deceased was the holder of the suit property, the Plaintiffs applied for and got their names mutated to the record of rights of the suit property vide Mutation Entry No.1585.

2.3 In the year 2016, the Plaintiffs found that the name of the Government of Maharashtra was mutated to the record of rights of the suit property vide Mutation Entry No.1630, pursuant to an order dated 11 June 2014 that, a sum of Rs.7,68,000/- was due and payable to the State Government towards the royalty and penalty for unlawful excavation of the minerals from the suit property, and, on account of default, the suit property stood attached. Further enquiries revealed that Defendant Nos.1 and 2 were using the suit property for parking of the vehicles of the customers who frequented their hotel.

2.4 The Plaintiffs, thus, addressed a notice to the Defendants on 29 March 2016 calling upon the Defendants to handover clear and vacant possession of the suit property. In response thereto, Defendant Nos.1 and 2 claimed that the deceased had sold the suit property to Asaram Teju Rathod (Defendant No.3) under the Sale Deed dated 3 January 2007. Thus, the Plaintiffs had no subsisting right, title and interest in the suit property. Defendant Nos.1 and 2, even otherwise, claimed to be in actual, open, uninterrupted and hostile possession of the suit property from 10 February 2006 and, thus, the title of the Plaintiffs was lost.

2.5 The Plaintiffs, thus, instituted a suit on 12 July 2018 seeking, inter alia, declarations that the Defendants were the rank trespassers qua the suit property; the Sale Deed dated 3 January 2007 in respect of the suit property is void and illegal and does not bind the Plaintiffs and the consequential relief of injunction and delivery of possession of the suit property.

2.6 Defendant Nos.1 and 2 have filed an application for rejection of the plaint on various grounds, including that the suit claim was not properly valued, the suit was bad for non-joinder of necessary parties and the failure to furnish correct description of the suit property, and also barred by law of limitation.

2.7 By the impugned order, the learned Civil Judge was persuaded to reject the application observing, inter alia, that, though the suit claim was not

properly valued, yet, as the Plaintiffs had paid the court fees on the basis of the market value of the suit property under the provisions of Section 6(iv)(j) of the Maharashtra Court Fees Act, 1959, the valuation of the suit claim and the payment of the Court Fees thereon, cannot be faulted to such extent as to reject the plaint at the threshold. The ground of bar of limitation was negatived observing, inter alia, that the issue of limitation was mixed question of law and facts and from the perusal of the averments in the plaint, it did not appear that the suit was ex-facie barred by limitation. Investigation into facts and documents which were not annexed to the plaint was warranted to determine the bar of limitation, and, therefore, the plaint cannot be rejected on the said count.

2.8 Being aggrieved, the Defendants have invoked the revisional jurisdiction.

3. I have heard Mr. Pradip Thorat, the learned Counsel for the Applicants, and Mr. Kamlesh Mali, the learned Counsel for Respondent Nos.1 and 3, at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record.

4. Mr. Thorat would urge that the learned Civil Judge committed gross error in law in declining to exercise the power to reject the plaint on the ground of bar of limitation. Taking the Court through the averments in the plaint, Mr. Thorat would urge, the learned Civil Judge was in error in holding

that the investigation into facts was warranted to determine the bar of limitation. On the contrary, according to Mr. Thorat, the averments in the plaint would indicate that, immediately after the demise of Dhirubhai Damani, the Plaintiffs claimed to have caused search of the revenue record. Yet, the suit came to be instituted in the year 2018.

5. Moreover, according to Mr. Thorat, since Defendant No.3 had acquired the ownership over the suit property under a registered instrument, that constitutes a constructive notice under Section 3 of the Transfer of Property Act, 1882. Thus, as the Deed of Conveyance was executed by the deceased in favour of Defendant No.3 on 3 January 2007, the institution of the suit seeking declaration qua the said instrument in the year 2018 was, ex-facie, barred by law of limitation.

6. To buttress this submission, Mr. Thorat placed reliance on a recent judgment of the Supreme Court in the case of **Shri Mukund Bhavan Trust and Ors. V/s. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and Anr.**¹.

7. Mr. Thorat would further urge that, the learned Civil Judge was also in error in not directing the Plaintiffs to correct the valuation despite holding that the valuation of the suit claim was not proper. Therefore, the impugned order deserves to be quashed and set aside, submitted Mr. Thorat.

1 2024 SCC Online SC 3844

8. In opposition to this, Mr. Kamlesh Mali, learned Counsel for the Respondents – Plaintiffs, supported the impugned order. It was submitted that a bare perusal of the instrument under which Defendant No.3 allegedly acquired the suit property is, ex-facie, fraudulent. Neither the photograph affixed on the said Sale Deed is that of late Dhirubhai Damani. Nor the signature is that of late Dhirubhai Damani. In fact, the said document appears to have been executed by one Dhirubhai Savlaram Damani and not the predecessor-in-title of the Plaintiffs. On the strength of such fraudulent instrument, the Defendants have made an attempt to usurp the suit property.

9. Laying emphasis on the fact that initially names of the Plaintiffs were mutated to the record of rights vide Mutation Entry No.1585 and the Plaintiffs were unaware of the existence of the registered instrument in favour of Defendant No.3 till a reference was made to the said document in the reply addressed on behalf of the Defendant Nos.1 and 2, Mr. Mali would urge, in the facts of the case, the question of limitation is indeed a mixed question of law and facts. Therefore, the learned Civil Judge cannot be said to have committed any error in declining to reject the plaint.

10. The basic facts appear to be rather incontrovertible. First, the deceased was the holder of the suit property. The deceased had acquired the suit property under the Indenture of Sale dated 15 January 1998. Second, the deceased left behind the Plaintiffs as the surviving heirs. The mutation of the

names of the Plaintiffs to the record of rights of the suit land vide Mutation Entry No.1585 also does not appear to be much in contest. The controversy between the parties revolves around the fact as to whether the deceased had conveyed the suit property during his lifetime under the registered Instrument dated 3 January 2007 and does it bind the Plaintiffs ?

11. Rejection of the plaint was primarily sought on the ground that the suit for declaration qua the said Sale Deed dated 3 January 2007 instituted in the year 2018 was ex-facie barred by law of limitation. The bar of limitation, Defendant Nos.1 and 2 claimed, is evident from the very averments in the plaint and no further inquiry was warranted.

12. It is trite, while considering the prayer for rejection of the plaint, under the provisions of Order 7 Rule 11 of the Code, only the averments in the plaint as a whole along with the documents annexed to the plaint are required to be considered. The contentions of the Defendants or any other evidentiary material cannot be delved into at the stage of such consideration. At the same time, the plaint is required to be read as a whole in a meaningful manner and not in formalistic manner. If an effort is made to demonstrate a cause of action where none exists by resorting to clever drafting or the bar to the maintainability of the suit is sought to be circumvented by camouflaging the real transaction and the nature of the suit, then, it is the duty of the Court to construe the true import of the averments in the plaint and nip the fruitless

litigation in the bud.

13. In the case at hand, if the averments in the plaint are read as a whole, it becomes evident that the plain and simple case of the Plaintiffs is that they, being the Class I heirs of the deceased, are the owners of the suit property. They became aware of the encumbrances on the suit property in the year 2016. They tried to obtain the certified copy of the record of rights. Further enquiries revealed that the Defendant Nos.1 and 2 were in unlawful occupation of the suit property, and, when confronted, Defendants had set up an allegedly fraudulent sale deed as the instrument under which the deceased had divested himself of the ownership over the suit property. These averments in the plaint find prima facie support in the pre-suit notices addressed on behalf of the Plaintiffs to the Tahasildar, Vadgaon on 18 March 2016 and Defendant No.1 on 29 March 2016.

14. In the reply to the notice, it appears Defendant Nos.1 and 2 referred to the sale deed purportedly executed by the deceased in favour of Asaram Teju Rathod – Defendant No.3 on 3 January 2007. Controverting the genuineness of the said claim, the suit came to be instituted.

15. In the face of the aforesaid material, I find it rather difficult to accede to the submission of Mr. Thorat that the claim of the Plaintiffs that they were unaware of the registered sale deed in favour of Defendant No.3 is, ex-facie, untenable and the date of the knowledge of the said sale deed, is an artificial

date. In the rejoinder to the said reply, dated 3 January 2016, the Plaintiffs called upon Defendant Nos.1 and 2 to give inspection of the documents and alleged that the instrument was forged. Allegations of forgery are required to be appreciated in the light of the fact that, apparently there is a disconnect between the name of the vendor shown on the said instrument and the predecessor-in-title of the Plaintiffs. Whether the photograph appearing on the said sale deed is that of the predecessor-in-title of the Plaintiffs is again a contentious issue and would warrant investigation into facts and adduction of evidence.

16. From this standpoint, the learned Civil Judge was justified in holding that, in the facts of the case, the date of knowledge of the sale deed to the Plaintiffs appears to be a mixed question of law and facts.

17. Mr. Thorat would further urge, since the document is registered, it constitutes a constructive notice, and, therefore, the suit ought to have been instituted within a period of three years from the date of the accrual of the cause of action.

18. In the case of **Shri Mukund Bhavan Trust and Ors. (supra)**, the Supreme Court in the facts of the said case and after adverting to the provisions contained in Section 3 of the Transfer of Property Act, observed that when a portion of the suit property has been conveyed by Court auction and registered in the first instance and when another portion has been

conveyed by a registered sale deed in 1952, there is a constructive notice from the date of registration and the presumption under Section 3 of the Transfer of Property Act, comes into operation.

19. The Supreme Court further postulated that though the question of limitation generally is mixed question of law and facts, when upon meaningful reading of the plaint, the Court can come to a conclusion that under the given circumstances, after dissecting the vices of clever drafting creating an illusion of cause of action, the suit is hopelessly barred, the plaint can be rejected under Order VII Rule 11. In the facts of the said case, it was observed that, that was not a case where a fraudulent document was created by the appellant or his predecessors. The title to the suit property was conveyed in 1938 and 1952, and what transpired later by way of compromise was only an affirmative assertion by the State.

20. I am afraid, the aforesaid pronouncement is of much assistance to the Defendants. As noted above, there are clear averments of fraudulent execution of the sale deed dated 3 January 2007, which, prima facie, find support in the intrinsic evidence of the document itself. Secondly, the claim of the Plaintiffs that they became aware of the said sale deed when the instrument was first set up by the Defendants, is also borne out by the pre-suit correspondence exchanged between the parties. Thirdly, the names of the Plaintiffs were mutated to the record of rights of the suit property after the

demise of the deceased, and, later on, encumbrance in favour of the State was recorded. All these factors cumulatively warrant investigation into facts. I am, therefore, impelled to hold that, in the facts of the case, the question as to whether the suit is barred by limitation is a mixed question of law and facts and its determination would warrant evaluation of the material and evidence on record and it is not a case where, upon a bare perusal of the averments in the plaint, an inference can be drawn that the suit is ex-facie barred by limitation.

21. On the aspect of the proper valuation of the suit claim, suffice to note that the Plaintiffs have valued the suit claim according to the market value of the suit property and paid the Court fees in accordance with the provisions of Section 6(iv)(j) of the Maharashtra Court Fees Act, 1959. In any event, the issue of correct valuation of the suit claim and payment of court fees can be framed and adjudicated at the trial.

22. Resultantly, in exercise of revisional jurisdiction, this Court does not find material irregularity in the exercise of jurisdiction by the trial Court.

23. Hence, the following order :

ORDER

- (i) Civil Revision Application stands dismissed.
- (ii) No costs.

(N.J.JAMADAR, J.)