

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 555 OF 2025

Pramod Ramkrishna Visal ..Applicant
Versus
Vijaya Alias Mohini Madhukar Kulkarni & Ors ...Respondents

Mr. Mahesh Barve, for the Applicant.

CORAM: N. J. JAMADAR, J.
DATE : 2nd DECEMBER 2025

P.C.:

1. Heard the learned Counsel for the Applicant.
2. The challenge in this Revision Application is to an order dated 30th July 2025, passed by the Addl Judge, Small Causes Court, Pune, whereby an application preferred by the Applicant-Defendant No.3 for rejection of the Plaint under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 ("the Code"), came to be rejected.
3. The Plaintiff is the sister of Defendant Nos. 1, 2 and 3. Defendant No.4 is the sister of Plaintiff and Defendant Nos. 1, 2 and 3. Asserting that the suit property is the joint family property, the Plaintiff instituted a Suit seeking a declaration that she is the co-owner of the property and for declaration of share in the suit property, and also to restrain the Defendants from creating third party interest in the suit property.

4. In paragraph 8 of the Complaint, the Plaintiff asserted that, in the year 2008, she realised that the Defendant Nos. 1 to 3 had played a fraud on the Plaintiff and the Defendant No. 4 by creating revenue record to show that the Plaintiff and the Defendant No.4 had relinquished their right, title and interest in the suit properties.

5. The learned Counsel for the Applicant asserted that, as the fraud was allegedly discovered in the year 2008, the institution of the Suit in the year 2013 was clearly barred by law of limitation. It was further submitted that, there was no cause of action as the Plaintiff had relinquished her share in the suit property by giving statements before the Revenue Authorities.

6. It is trite while considering an Application for rejection of the Complaint, the Complaint, as a whole, is required to be read in a meaningful and not formalistic manner. So construed, the essence of the Suit is that, the Plaintiff and Defendant Nos. 1 to 4 have right, title and interest in the suit property which was acquired by their father. The Plaintiff essentially asserts her right as a co-owner of the suit property and seeks declaration regarding her status as co-owner and ascertainment of her share therein.

7. Evidently, there is no registered instrument under which the Plaintiff has allegedly relinquished her right, title and interest in the suit property. In the complaint, it was alleged that the Defendants had created

documents to show that the Plaintiff had relinquished her share in the suit property by making statements before the revenue authorities.

8. The submission of the learned Counsel for the Applicant that since the alleged fraud was discovered in the year 2008, and, thus, the suit instituted in the year 2013, was barred by law of limitation, loses sight of the existence of co-ownership. The principle of community of interest and unity of possession comes into play. A clear case of ouster would be required to be made out to defeat the rights of the Plaintiff. A case of oral relinquishment, in a situation of the present nature, would stand on the same footing as oral partition. In the case of **Vineeta Sharma Vs Rakesh Sharma and Ors¹**, the Supreme Court cautioned against accepting the theory of oral partition to defeat the rights of a daughter. Those observations read as under :

“129. Resultantly, we answer the reference as under :

- (i) The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.
- (ii) The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.

1 (2020) 9 SCC 1.

(iii) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.

(iv) The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class-I as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

(v) In view of the rigor of provisions of Explanation to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908, or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.”

(emphasis supplied)

9. Resultantly, the learned Civil Judge committed no error in rejecting the application for rejection of the plaint. Neither there is any

jurisdictional error nor material irregularity which would warrant exercise of revisional jurisdictional.

10. The Civil Revision Application, thus, stands rejected.

[N. J. JAMADAR, J.]