

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 697 OF 2023**

Ramdas Vishnu Murkute ... Applicant

Vs.

Late Sahebrao Tukaram Tapkir (Dec.) Thr.
Lrs. Smt. Anajanabai Sahebrao Tapkir And ... Respondents
Ors.

**WITH
INTERIM APPLICATION NO. 12620 OF 2025
WITH
INTERIM APPLICATION NO. 12619 OF 2025
IN
CIVIL REVISION APPLICATION NO. 697 OF 2023**

Mukund Tukaram Tapkir ... Applicant

IN THE MATTER BETWEEN ... Applicant in CRA

Ramdas Vishnu Murkute

Vs.

Late Sahebrao Tukaram Tapkir (Dec.)
Thr. Lrs. Smt. Anajanabai Sahebrao
Tapkir And Ors. ... Respondents

Mr. Suresh Sabrad a/w Neha Parte a/w Pratik Sabrad a/w
Eshwaree Kudalkar for the Applicant.

Mr. Avinash Bhuskute for Respondent No.1.

Mr. Sanjeev J. Rairkar a/w for Respondent No.2.

CORAM : GAURI GODSE, J.

DATED : 27th NOVEMBER 2025

ORDER:

1. This civil revision application is filed by the defendant no.1 to challenge the order passed by the trial Court rejecting his application under Order VII Rule 11 of the Civil Procedure Code ('CPC').

2. Learned counsel for the applicant submits that the suit filed in the year 2012 to challenge the sale deed executed in the year 1988 is barred by limitation on the plain reading of the plaint. He relies upon the relevant pleadings in the plaint for the cause of action to file the suit. He submits that as per paragraph 17 of the plaint, even according to the plaintiffs the initial cause of action arose when the sale deed was fraudulently executed by defendant no.4 on 25th April 1988 in favour of defendant no.1 by avoiding the undivided share of the plaintiffs in the suit property no.1. He points out that the plaintiffs have filed the suit without explaining how the suit filed in 2012 on the cause of action that arose in 1988 would be within limitation.

3. To support his submissions, learned counsel for the applicant relies on the decision of the Apex Court in ***Nikhila***

Divyang Mehta and Another Versus Hitesh P. Sanghvi and Others¹. In the said decision, the suit was filed on the cause of action, relying on three occasions. With reference to the cause of action raised in the said suit, the Apex Court held that the suit would be barred by limitation, as, in view of the facts of the case, the limitation for filing the suit could fall under Article 58 of the Schedule to the Limitation Act. Hence, in view of the cause of action as pleaded in the said suit, the Apex Court held that the plaintiff in the said suit had categorically stated that he had acquired the knowledge of the will and codicil in the first week of November 2014 and as such as per averments in the plaint, the suit was instituted beyond the period of limitation and thus, was rejected at the threshold. Learned counsel for the applicant, therefore, submits that even in the present case, on plain reading of the plaint, even according to the plaintiffs, the cause of action had arisen in the year 1988; hence, the plaintiffs were not entitled to file a suit placing reliance on the notice issued by the plaintiffs for claiming that the suit was within limitation. He therefore submits that the trial Court has erred in rejecting the application for rejection of the plaint at the

1 2025 SCC OnLine SC 779

threshold as barred by the law of limitation.

4. I have carefully perused the pleadings in the plaint. In the plaint paragraph no. 1A, the plaintiffs have described Survey No.55 Hissa No.4 admeasuring 2 Hectares 32.5 R out of the land totally admeasuring 9 Hectres 30 R. The said area is described as suit property no.1. In plaint paragraph 1B, plaintiffs have described suit property no.2 as the plaintiffs' undivided $1/6^{\text{th}}$ share each admeasuring 38.75 R each out of the suit property described as property no.1. The plaintiffs have further pleaded that defendant no.4 had the power of attorney holder for obtaining loan and had no authority to sell the suit property no.1. The plaintiffs further alleged that the defendant no.4 in collusion with defendant no.1 sold the property. The plaintiffs further pleaded that the suit property no.1 is an undivided joint family property of the plaintiffs and their other brother, and that defendant no.4 alone had no right, title, or interest to sell the suit property no.1 by avoiding the undivided share of the plaintiffs.

5. The plaintiffs pleaded that they are the heirs and legal representatives of the deceased Sahebrao. The plaintiffs in the

subsequent paragraphs have pleaded that the dispute in respect of the suit property was pending from 1994 to 2007 in the Civil Court at Pune, the High Court at Bombay and the Apex Court, and during the said period, there was an order of stay in respect of the suit property and the other joint family properties of the plaintiffs' family. The plaintiffs have pleaded that Baban Maruti Tapkir filed the said litigation. Considering the pending dispute, the plaintiffs have further pleaded in paragraph 15 that they issued a legal notice to defendants nos. 1 to 4, calling upon them to cancel the sale deed. Based on these averments in paragraphs 13 to 16, the plaintiffs have pleaded that issuance of the notice was the cause of action to seek the relief as prayed in the suit.

6. Learned counsel for the applicant, after pointing out these averments in the plaint, submitted that the plaintiffs have not pleaded the date of the notice for the purpose of seeking reliance on the issuance of the notice to support the cause of action for filing the suit in the year 2012. Hence, according to the learned counsel for the applicant, the averments in the plaint, without any material particulars, clearly show that the

suit filed in 2012 would be barred by limitation.

7. A careful perusal of the plaint as a whole would reveal that the plaintiffs have pleaded the facts regarding the dispute in respect of the suit property pending before the Civil Court, the High Court, and the Apex Court. The plaintiffs have stated in paragraph 13 that the proceedings had continued up to 2007. Thus, based on these averments, the plaintiffs filed the suit in 2012 with a substantial prayer for partition and separate possession and also prayed for a declaration that they have an undivided share in respect of the suit property. Thus, based on the substantive prayer for partition and separate possession, the plaintiffs have also prayed for declaration that the sale deed executed in the year 1988 should be declared null and void to the extent of plaintiffs' share described as suit property no.2. The plaintiffs have thus also prayed that the power of attorney based on which the sale deed was executed, be declared as cancelled to the extent of suit property no.2. In view of the substantive relief of partition and separate possession, the plaintiffs have also prayed for a decree of injunction.

8. Considering these pleadings regarding the cause of

action for filing the suit, the trial Court has observed that the issue of limitation cannot be decided at the stage of Order VII, Order 11 of the CPC, as it involves a mix of questions of law and fact. So far as the particulars to support the basic pleadings in the plaint are concerned, the plaintiffs would be entitled to lead evidence to bring on record the supporting material particulars.

9. In the decision of the Apex Court relied upon by the learned counsel for the applicant, the suit was filed in respect of a dispute that arose amongst the family members, i.e., the sons and daughters of the deceased, who had executed a will and a codicil. Hence, the suit was filed for a declaration that the will and codicil be declared as null and void. The observations of the Apex Court in the said case are with respect to the three different causes of action pleaded by the plaintiffs with reference to the limitation period described under Article 58 of the Schedule to the Limitation Act. So far as the present case is concerned, the substantive prayer in the suit is for partition and separate possession. Hence, the plaintiffs would be entitled to lead evidence to prove the exclusion from the joint family

property and that their cause of action falls within the scope of Article 110 of the Limitation Act. Therefore, in view of the different facts and the nature of reliefs claimed in the present suit, the legal principles settled by the Hon'ble Apex Court would not apply so far as the present case is concerned.

10. In the decision of ***Virender Nath Gautam v. Satpal Singh***², the Apex Court, while dealing with a prayer of rejection of an election petition at the threshold, discussed the requirement of pleading all material facts, in accordance with the provisions of the Act. The Apex Court held that if the material facts are not stated in a petition, it is liable to be dismissed. While explaining the distinction between material facts and material particulars, the Apex Court held as under:

“35. All “material facts” must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial.”

2 (2007) 3 SCC 617

*“50. There is distinction between **facta probanda** (the facts required to be proved i.e. material facts) and **facta probantia** (the facts by means of which they are proved i.e. particulars or evidence). It is settled law that pleadings must contain only **facta probanda** and not **facta probantia**. The material facts on which the party relies for his claim are called **facta probanda** and they must be stated in the pleadings. But the facts or facts by means of which **facta probanda** (material facts) are proved and which are in the nature of **facta probantia** (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue.”*

11. The legal principles governing the rejection of a plaint under Order VII Rule 11 of the CPC are no longer *res integra*. The Hon'ble Apex Court in the decision of ***Dahiben v. Arvindbhai Kalyanji Bhanusali***³, held that the power conferred on the court to terminate a civil action is a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

12. In the present case, in view of the basic pleadings regarding the execution of the sale deed, the pending litigation in respect of the suit properties from 1994 to 2007, and the

³ (2020) 7 SCC 366

notice issued by the plaintiffs, the issue of limitation would involve mixed questions of law and fact. Hence, in view of substantial pleadings in the plaint regarding the basic facts, the suit would warrant a trial, and the plaintiffs would be entitled to lead evidence to support their cause of action and the reliefs claimed to be within limitation. In view of the facts pleaded in the present case, as discussed in the above paragraphs, the legal principles settled by the Apex Court in **Virender Nath Gautam** with regard to the basic pleadings and the material particulars to be proved in evidence would squarely apply to the present case. The trial Court has therefore rightly refused to reject the plaint at the threshold on the ground that the facts in the present case would show that the issue of limitation would be a mixed question of law and fact. Therefore, rejection of the plaint on the ground of limitation without permitting the plaintiffs to lead evidence would be legally unsustainable.

13. I do not find any jurisdictional error or any other manifest error in the impugned order warranting the exercise of the powers under Section 115 of CPC to interfere with the impugned order.

14. The Civil Revision Application is therefore dismissed.

15. In view of the dismissal of the civil revision application, pending interim applications are disposed of as infructuous.

(GAURI GODSE, J.)