



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL REVISION APPLICATION NO.71 OF 2025

APPLICANT
(Org. Deft. No.1)

:- Shri Suresh Indarchand Lunawat,
Aged about 66 years, Occu Business,
R/o Plot No.2025, Opp. Krushna
Apartment, Pardi, Bhandara Road,
Nagpur.

..VERSUS..

NON-APPLICANTS
(Org. Plaintiff)

:- 1) Shri ChandraKumar S/o Indarchand
Lunawat, Aged about 58 years, Occu.
Business, R/o Pardi, Bhandewadi,
Nagpur.

(Org. Deft. No.3)

2) Mrs. Pushpadevi Paraschandji Surana,
Aged about 64 years, Occu.
Household, R/o Samta Colony, Hear
Harsop, Raipur, Chhatisgarh –
492001.

(Org. Deft. No.4)

3) Mrs. Reshmadevi Dilipchand Lodha,
Aged about 58 years, Occu.
Household, R/o 166, Ward No.25,
New Market Main Road, Dall Rajhara
Tahsil-Balod Durg, Chhatisgarh –
491228.

(Org. Deft. No.5)

4) Mrs. Pornima Gyanchand Katariya,
Aged about 49 years, Occu.
Household, R/o Suraj Sada, Near Sai

Mandir, Yavatmal road, Wani –
445304. District – Yavatmal.

(Org. Deft. No.6)

- 5) Mrs. Manju Sureschand Gothi, Aged
about 50 years, Occu. Household,
R/o Godhi Bazar, Baitul – 460 001.

Mr. R.M. Bhangde, Advocate for Applicant.

Mr H.R. Gadhia, Advocate a/w Aniket Sawal, Advocate for the Non-applicant No.1.

CORAM : ROHIT W. JOSHI, J.

DATE : 16/10/2025

ORAL JUDGMENT :

1. Heard.

2. The present revision application is filed challenging the order dated 13.01.2023, passed by the learned 14th Joint Civil Judge Senior Division, Nagpur, on application at Exh.15 in Special Civil Suit No.260 of 2020, by which application for rejection of plaint filed by the present applicant (original defendant No.1) came to be rejected.

3. The applicant and non-applicants are related to each other as brothers and sisters. Their father, late Indarchand Lunawat, expired on 18.03.2008, and their mother, late Rajkuwar Lunawat, expired on 13.03.2019. The non-applicant No.1 is the original plaintiff, who has filed the aforesaid suit for partition and separate possession of properties owned by the late Indarchand, father of the parties. The parties will be hereinafter referred to as “Plaintiff” and Defendant”.

4. Perusal of the plaint averments will demonstrate that the plaintiff has challenged the Will dated 10.03.2008, stated to be executed by his late father Indarchand in favour of defendant No.1. He has sought declaration that all the legal representatives of late father have equal share in the suit property and further sought a decree of partition and separate possession in respect to the same.

5. The plaintiff has averred that the defendants had executed a relinquishment deed with respect to the House No.2026 in his favour on 30.06.2018 and by virtue of the said document, he became the absolute owner of the said house property. The plaintiff has further averred that, at that time, he had made a request for

effecting partition with respect to all the properties of the deceased father, however, the defendant No.1 asked him to obtain document of relinquishment with respect to house property initially and thereafter, appropriate decision with respect to other properties will be taken. The plaintiff has averred that after execution of relinquishment deed, he approached the Talathi for mutation of names in the Revenue Records with respect to an agricultural land at village Punapur. He states that, at that time, he learnt that the name of defendant No.1 was mutated with respect to the said agricultural land on the basis of some Will. The plaintiff has stated that thereafter, he searched for the document in the office of Sub-Registrar and obtained certified copy of Will dated 01.07.2008, on 24.04.2019 and has accordingly filed a suit challenging the Will and seeking partition on 16.03.2020.

6. The non-applicant No.1, has stated above filed an application for rejection of plaint in the said suit vide Exh.15. The defendant No.1 raised contention that the Will in question is dated 10.03.2008 and it was registered on 01.07.2008, after demise of the father. The defendant No.1 has referred to the relinquishment deed and the documents pertaining to measurement of land bearing

Survey No.314 of village Titur to contend that the plaintiff was all along aware about the Will and had deliberately made a false statement in the plaint that he got the knowledge of the Will on 24.04.2019.

7. Mr. R.M. Bhangde, learned Advocate for the non-applicant No.1 drawn attention to the relinquishment deed pertaining to the house property relinquished in favour of the plaintiff. He states that in the boundaries of the said property, reference is made to the House No.2025, with the name of the defendant No.1 shown as the owner thereof. He contends that this property bequeathed to the defendant No.1 under the Will and therefore, it is clear that the statement in the plaint that plaintiff got knowledge of the Will on 24.04.2019 is incorrect.

8. He further states that, the measurement sheet pertaining to field Survey No.315 of village Titur was divided in four parts, one part was allotted to defendant No.1, his wife, wife of plaintiff and son of the plaintiff.

9. Mr. Bhangde, learned Advocate for the applicant contends that the land bearing Survey No.315 of village Titur was owned by late father who had bequeathed the said property to defendant No.1 under the Will dated 10.03.2008. The measurement of the said land was conducted on 17.12.2016 and the measurement sheet is signed by the plaintiff which will imply that the plaintiff had knowledge about the Will prior to 24.04.2019.

10. Mr. Bhangde, learned Advocate contends that since plaintiff has not mentioned correct date of knowledge of the Will, the said plaint must be rejected on the ground of limitation assuming that the plaintiff was aware about the Will from the date of its execution i.e. from 10.03.2008 or at least from the date of registration i.e. 01.07.2008.

11. *Per contra*, Mr. H.R. Gadhia, learned Advocate for the non-applicant contends that while dealing with an application for rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure (CPC), correctness of plaint averments cannot be looked into. He states that the plaint averments must be assumed to be

correct. He, therefore, contends that the application is rightly rejected by the learned trial Court.

12. Perusal of the measurement sheet dated 22.07.2015 will demonstrate that the said document does not refer to any Will. Likewise, the relinquishment dated 30.06.2018 also does not refer to any Will. It is true that while mentioning boundaries of the house property relinquished in favour of plaintiff, a reference to the house of defendant No.1 is made in the Relinquishment Deed. However, the Relinquishment Deed does not say that this house property was bequeathed in favour of the defendant No.1 by the father. The Relinquishment Deed also does not refer to the Will.

13. It is a well settled principle of law that, while dealing with the application for rejection of plaint, the plaintiff's averments must be assumed to be correct. The veracity of plaintiff's averments cannot be tested while dealing with an application for rejection of plaint. It is also true that documents filed by the plaintiff along with the plaint can be taken into consideration by dealing with the application for rejection of plaint. It is also well settled that action of rejection of plaint is a drastic action which cannot be resorted to unless the

plaint is clearly found to be barred. The documents which are referred by the learned advocates for the applicant do not explicitly demonstrate knowledge of the Will to the plaintiff prior to the date of knowledge mentioned in the plaint. In this regard, it will be appropriate to refer to the judgment of the Hon'ble Supreme Court relied upon by the learned Advocate for the non-applicant in the matter of *Salim D. Agboatwala and others ..vs.. Shamalji Oddhavji Thakkar and others*, reported in **(2021) 17 SCC 100**, wherein it is held as under:-

“As observed by this Court in P.V. Guru Raj Reddy v. P. Neeradha Reddy, reported in (2015) 8 SCC 331, the rejection of plaint under Order 7 Rule 11 is a drastic power conferred on the court to terminate a civil action at the threshold. Therefore, the conditions precedent to the exercise of the power are stringent and it is especially so when rejection of plaint is sought on the ground of limitation. When a plaintiff claims that he gained knowledge of the essential facts giving rise to the cause of action only at a particular point of time, the same has to be accepted at the stage of considering the application under Order 7 Rule 11.”

14. In view of the aforesaid authoritative pronouncement of the Hon'ble Supreme Court, it not possible to take a different view of the matter. The correctness of the plaint averments cannot be tested in the present revision, which arises from the order passed below application filed under Order 7 Rule 11 of the CPC. The

order passed by the learned trial Court does not disclose any jurisdictional error. Civil Revision application is therefore **dismissed**.

15. At this stage, Mr. Bhangde, learned Advocate for the applicant makes a request that the suit is of the year 2020 and the same may be expedited. He states that the attesting witnesses to the Will are senior citizens and therefore, there is anxiety to get the suit decided at the earliest.

16. The suit is of the year 2020. The learned trial Court is requested to make an endeavour to dispose of the suit as expeditiously as possible. The defendant will be at liberty to move appropriate application for examination of attesting witness (s) to the Will before evidence of plaintiff is recorded or at any other earlier stage. If such application is filed, the same be decided having regard to the peculiar facts of the case.

(ROHIT W. JOSHI, J.)