



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

CIVIL REVISION APPLICATION NO. 53 OF 2022

Arunkumar s/o Bipinbihari Bethariya aged about 65 years, Occ. Agriculturist and Business, R/o. Kholapur, Tal. Bhatkuli, Dist. Amravati	}	... Applicant
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Versus

Shekhar S/o Omprakash Jaiswal Aged 39 years, Occ. Business, R/o. Ravi Nivas, Sambbhaji Nagar, Jalna, Tq. & Dist. Jalna	}	... Non-applicant
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Mr. N.L. Jaiswal, Advocate for applicant.

Mr. K.B. Zinjarde, Advocate for non-applicant.

CORAM	:	VRUSHALI V. JOSHI, J.
RESERVED ON	:	08.07.2025.
PRONOUNCED ON	:	22.07.2025.

JUDGMENT:

Heard.

2. **Rule.** Rule made returnable forthwith. The Civil Revision Application is heard finally with the consent of the learned counsel appearing for the parties.

3. The applicant is preferring this Civil Revision Application being aggrieved by the order dated 27/04/2024 passed by the Civil Judge Senior Division. Achalpur, at Exhibit No - 10 in Regular Civil Suit No. 29 of 2017, thereby rejecting the application filed by the

applicant under Order VII Rule 11 of the Code of Civil Procedure for rejection of plaint.

4. It is the case of the applicant that the respondent is seeking for declaration, revocation and permanent injunction with respect to the properties bequeathed by Durgabai Jaiswal, in the name of her brother-in-law - Bipinbihari Bethariya on 16.01.1985 which is disputed. The question pertains to the fact that late Omprakash Jaiswal had accepted that the will was executed by Durgabai in the name of Bipinkumar Bethariya.

5. It is the contention of the learned advocate for the applicant, Mr. Jaiswal, that, during his lifetime Omprakash never objected the execution of the will and he was fully aware of this transaction as he many a times attended the probate proceedings bearing RMJC No. 2 of 1988. Hence, his legal heirs are governed by the principle of estoppel. Furthermore, the suit filed by the plaintiff is barred by limitation.

6. It was further submitted that as the competent Civil Court has adjudicated the issue and it has not been further challenged along with probate certificate which is in the name of Bipinkumar Bethariya, in the concerned Court, thus, it has reached its finality.

7. The advocate for the respondent, Mr. Zinjarde, has relied on the affidavit-in-reply on behalf of the respondent.

8. The learned advocate argued that there is an over writing in the typed copy on the date of will deed as alleged to be claimed by the petitioner as 16.01.1985. It was submitted that Durgabai treated Omprakash as her son, out of love and affection towards Omprakash, she executed a registered will deed on 28.06.1982 in favour of Omprakash and bequeathed her entire property including field and plots as described in.

9. It was further submitted that, late Omprakash never visited Court with his father in respect of proceedings of Probate Application No. 2 of 1988. The father of Omprakah; Bipinbihari was well aware with this fact that he is agitating his claim for grant of probate against his own son and therefore, it was his bounden duty to make his son a party to that probate proceedings which he did not do. This attitude of Bipinbihari is self-explanatory. Omprakash was not having knowledge about the said will deed. Hence, there is no question of applicability of estoppel against Omprakash and his successors.

10. It was specifically pleaded by the advocate of respondent that

the rule of estoppel works against a person and not against the suit and hence it does not fall within the ambit of above order. Moreover, this revision is not maintainable as there are no pleadings as required under Section 115 of C.P.C. Therefore, the present application be rejected imposing costs.

11. On perusal of the prayer in plaint it appears that the plaintiff i.e. non-applicant in this application has prayed that:

“It is, therefore, most humbly and respectfully prayed that the Hon'ble Court may kindly be pleased to-

a) declare the Will Deed dtd. 28/06/1982 executed and regd. by deceased Durgabai in favour of deceased omprakash is legal and valid and after the death of omprakash, all his legal heirs including the plff. are the owner of suit properties.

b) further declare the will deed dtd.16/01/1985 is false, fabricated document and manipulated got executed by Bipinbihari in his favour and in the name of Durgabai.

c) further declare the probate certificate obtained by Bipinbihari on 17/08/2001 from the Hon'ble Civil Judge(Sr.Div.), Achalpur by playing fraud and is null and void and therefore revoke it,

d) further declare that the will deed dtd.30/11/2003 regd. on 28/11/2016 is also a false, fabricated and manipulated document got executed by deft. in his favour after the death of Bipinbihari.

e) Grant the permanent injunction restraining the deft. from

interfering and claiming ownership over the properties bequeathed to Omprakash by Durgabai.

f) cost of the suit be awarded to the plff.

g) any other legal and proper relief be allowed in the interest of justice.”

12. The prayer is for cancellation of probate and cancellation of Will Deed as fabricated document. Though the cause of action for filing suit is mentioned as May 2015 and December 2016, when he came to know about the execution of Will in favour of his father i.e. Omprakash and when the plaintiff received the summons in R.M.J.C. No.136/2016 and came to know about the document of Will Deed dated 30.11.2003. The suit is filed by the plaintiff. The father of the plaintiff was the foster son of one Durgabai and according to him, she has bequeathed her property in favour of father of the plaintiff i.e. Omprakash Jaiswal, plaintiff came to know about it, after the death of his father, his father died in the year 2012 and thereafter, he took search and he came to know about the Will executed in favour of his father in year 1982. The probate was issued in favour of the father of Omprakash i.e. Bipin Bihari and he has also bequeathed the property in favour of one of his sons i.e. Arunkumar.

13. On perusal of the plaint and the prayer according to plaintiff, it is barred by law of limitation. If it is considered that after plaintiff became major, he has filed the suit and he came to know about the Will, which is one of the contentions in the plaint. It appears that non-applicant has filed the suit on 07.03.2017, at that time, his age is mentioned as 34 years. It is a case of clever drafting. It is observed by the Hon'ble Apex Court in the case of ***C.S. Ramaswamy Vs. V.K. Senthil and Ors., 2022 SCC Online SC 1330*** (with connected matters) that “if on a meaningful and not formal reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, it should exercise the power under Order VII Rule 11 of the code taking care to see that the ground mentioned therein is fulfilled, if clever drafting has created the illusion of the cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code of Civil Procedure, relied on the judgment in the case of T. Arivandandam [T. Arivandandam Vs. T.V. Satyapal (1977) 4 SCC 467], it is also observed as under:

“6.5. In Church of Christ Charitable Trust & Educational Charitable Society [Church of Christ Charitable Trust & Educational Charitable Society Vs. Ponniamman Educational Trust, (2012) 8 SCC 706], this Court in para 13 has observed and held as under :

13. While scrutinizing the plaint averments, it is the bounden duty of the trial court to ascertain the material for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words “cause of action”. A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.”

14. By filing the suit the original plaintiff have prayed to cancel the Will Deed which is executed in the year 1985 and probate certificate which was issued on 17.08.2001. The suit is filed in the year 2017, though the cause of action has been shown in the year 2015 but on plain reading of the plaint, it appears that the suit is clearly barred by law of limitation.

“6.8. In Madanuri Sri Rama Chandra Murthy [Madanuri Sri Rama Chandra Murthy v. Syed Jalal, (2017) 13 SCC 174], this Court has observed and held as under:

“7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the

plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.”

15. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to

see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code of Civil Procedure.

16. The plaintiff has challenged the Will deed executed in year 1985 father of plaintiff was present. Probate was granted by competent Court. From the plaint itself it reveals that by Will deed dated 16.01.1985 earlier Will which the plaintiff is claiming in favour of his father is cancelled. It appears that the plaintiff's mother and father stayed together for some period. After the death of father of plaintiff, he has challenged said Will. The cause of action is not genuine. Considering the authorities cited and observations made about artificial cause of action, there is no cause of action for plaintiff to challenge the Will and probate it is barred by law of limitation. The order passed by the learned Trial Court is quashed and set aside.

17. The civil revision application is allowed.

[VRUSHALI V. JOSHI, J.]

Prity