



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

CIVIL REVISION APPLICATION NO.56/2023

1. Smt. Rajabeti Wd/o Yashodanandan Pandey,
aged about 90 Yrs., Occu. Nil,
R/o House No.165, Opposite Corporation
Library, Sadar, Nagpur
at present residing at Bungalow
No.2, Near Ravi Shankar University
Gate, Raipur (Chhatisgarh).
2. Smt. Pushpa W/o Satishchandra Bajpayee,
aged about 65 Yrs., Occu. Household,
R/o Bungalow No.2, Near Ravi
Shankar University Gate,
Raipur (Chhatisgarh).
3. Smt. Asha W/o Surendra Kumar Jain,
aged about 68 Yrs., Occu. Household,
R/o Hill Tower Apartment, Plot
No.17-C, Near University Campus,
Amravati Road, Nagpur. ... Applicants

- Versus -

Shri Vijay Kumar S/o Yashodanandan Pandey,
aged about 74 Yrs., Occ. Retired,
R/o House No.165. Opposite Corporation
Library, Sadar, Nagpur. ... Non-applicant

Mr. G.R. Kothari, Advocate with Mr. J.K. Matale, Advocate for
the applicants.

Mr. Yash Maheshwari, Advocate for the non-applicant.

CORAM: MRS.VRUSHALI V. JOSHI, J.

DATE OF RESERVING THE JUDGMENT : 18.07.2025.

DATE OF PRONOUNCING THE JUDGMENT : 14.08.2025.

JUDGMENT

Rule. Rule made returnable forthwith. Heard finally by consent of learned Advocates for the parties.

2. The applicants/defendants have approached this Court being aggrieved by the order dated 03.01.2019 passed by Joint Civil Judge, Junior Division, Nagpur below Exh.48 in Regular Civil Suit No.230/2005 thereby rejecting the application filed by the applicants for rejection of plaint under provisions of Order VII Rule 11 of the Code of Civil Procedure.

3. The non-applicant/plaintiff is the brother of applicant Nos.2 and 3 and son of applicant No.1 who has filed the civil suit against the applicants challenging the will-deed executed on 13.09.1990 by his father Yashodanandan Pandey, who expired in March 1999. The non-applicant has stated that the will-deed

came into operation on 16.03.1999. In the month of April 2001, when the non-applicant had started carrying out certain construction and the applicant No.1 had issued a legal notice, at that time, he came to know about the will-deed.

4. The applicant No.1 was staying at first floor. She had shifted to daughter's residence for maintenance work of the building. The non-applicant taking advantage of her absence sought entry into first floor from the western side of the suit house and started carrying out illegal construction on the first floor on western side portion. Therefore, the applicants have filed civil Suit No.358/2004 against the non-applicant. Subsequently, non-applicant had filed the suit i.e. R.C.S. No.230/2005 for declaration and permanent injunction against the applicants in February 2005 challenging the will-deed dated 13.09.1990 in respect of the properties more particularly mentioned in schedule "A" and "B" of the plaint. The will is challenged on the ground that the father of plaintiff Yashodanandan had no authority to

deal with the schedule properties by way of will as the suit properties are HUF properties. The prayer is made by the plaintiff to declare the said will as null and void, sham, bogus and without any authority in law.

5. Learned Advocate for the applicants has argued that suit filed by the non-applicant was barred by limitation and the plaint was liable to be rejected at the threshold. It is the contention of the applicants that opportunity to argue the application under Order VII Rule 11 of the C.P.C. was not given to the applicants which is also mentioned in the order. Hence prayed to remand the matter to argue the application before the trial Court.

6. Learned Advocate for the non-applicant has stated that the ground of limitation is raised in the suit which is the mixed question of law and facts and it will be considered after considering the evidence on record. The non-applicant has filed

suit for declaration that the suit property is belonging to HUF and it cannot be distributed by will. The non-applicant has placed reliance on the judgment in case of Geetha D/o Late Krishna and others V/s Nanjundaswamy and others reported in **2023 SCC OnLine SC 1407**. Paragraph 12 of said judgment reads as follows:-

“12. There is yet another reason why the judgment of the High Court is not sustainable. In an application under Order VII Rule 11, CPC a plaint cannot be rejected in part. This principle is well established and has been continuously followed since the 1936 decision in Maqsood Ahmad v. Mathra Datt & Co. This principle is also explained in a recent decision of this Court in Sejal Glass Ltd. v. Navilan Merchants (P) Ltd., which was again followed in Madhav Prasad Aggarwal v. Axis Bank Ltd. The relevant portion of Madhav Prasad (supra) is extracted hereinunder:

“10. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power under Order 7 Rule 11(d) CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in Sejal Glass Ltd. (Sejal Glass Ltd. v. Navlin Merchants (P) Ltd., (2018) 11 SCC 780 : (2018) 5 SCC (Civ) 256] is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) CPC stating that

the plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the Director's Defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against Defendant 1 company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) CPC. The Court answered the said question in the negative by adverting to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) CPC will have no application at all, and the suit as a whole must then proceed to trial.”

The non-applicant has also placed reliance on the judgment in case of Indian Evangelical Lutheran Church Trust Association V/s. Sri Bala & Co. reported in **2025 SCC OnLine SC 48** wherein it is held that once the time has begun to run, it will run continuously except in certain situations.

The non-applicant has also placed reliance on the judgment in case of Irshad Ali V/s. Shahaba Begum reported in **1997 SCC OnLine Del 479**.

The suit between the non-applicant i.e. plaintiff and defendants is also pending which is filed by the mother of the plaintiff. It is submitted that considering the litigations between the parties and their relations, evidence is required. Hence prayed to reject the instant application.

7. Heard the learned Advocate for the applicants and the learned Advocate for the non-applicant and perused the record.

8. On perusal of suit filed by the plaintiff i.e. the non-applicant it appears that the plaintiff is praying for declaration of the will-deed which was executed by the father of plaintiff in the year 1990. It come into operation after the death of the father i.e. 1999. The plaintiff in his plaint has admitted that he came to know about the said will in the year 2001 when he received the notice from applicants i.e. defendants. However, he has not filed any suit till 2005 and has stated that cause of action arose in the year 2003 when he has issued notice to the

defendants. It appears from the record that the knowledge of the will-deed was received by the plaintiff in the year 2001. The earlier litigation was there i.e. the suit which was filed by the mother of the plaintiff against the non-applicant. In the plaint, it is mentioned that the suits filed by the sisters of the plaintiff in Madhya Pradesh about the properties bequeathed by the father of the plaintiff are pending. Though the plaintiff was aware about the will-deed executed regarding suit property in the year 2001 and the limitation to file the suit for cancellation of will or any instrument is 3 years, he has not taken any action and has filed the suit in the year 2005, which is beyond limitation. The suit is pending since 2005. Now, the suit is fixed for recording of evidence and thereafter the defendants have filed the application under Order VII Rule 11 of the C.P.C. Earlier suit is also pending which is filed by the defendants against the plaintiff. The will is challenged by the plaintiff and the limitation for challenging the instrument is 3 years from the date of execution of said instrument. However, according to applicants, if it is considered

from the date of knowledge, the limitation can be counted from 2001. The applicants have relied on the judgment of this Court in case of Gaurav and others Vs. Tukaram Pandurang Dhagekar and others reported in MANU/MH/0313/2018. Paragraph No.18 and relevant observations in paragraph No.19 of said judgment read as follows:-

“18. A perusal of the plaint shows that an attempt is made on the part of the plaintiff to somehow stretch the facts of the present case, so as to show as if cause of action could arise even beyond the period of three years from the date fixed in the agreement i.e. 13.10.1997, in order to justify filing of the present suit in the year 2011. This is an attempt by way of clever drafting to create a cloud of doubt in the mind of the Court that determination of limitation in the present case is a mixed question of law and fact. On this basis, an attempt is made to show as if a full dress trial is required and an illusion of cause of action is sought to be created to ensure that the suit is not nipped in the bud. This has been deprecated by the Hon'ble Supreme Court in various judgments and it has been held that bogus litigation can be shot down at the earliest stage. In this context, the learned counsel appearing on behalf of the appellant is justified in relying upon the judgment of the Hon'ble Supreme Court in the case of Church of Christ Charitable Trust and Educational Charitable Society (supra), wherein the Hon'ble Supreme Court has held as follows:-

"12. It is also useful to refer the judgment in T. Arivandandam vs. T.V. Satyapal & Anr., MANU/SC/0034/1977 : (1977) 4 SCC 467,

wherein while considering the very same provision, i.e. Order VII Rule 11 and the duty of the trial Court in considering such application, this Court has reminded the trial Judges with the following observation:

"5.The learned Munsif must remember that if on a meaningful - for formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And if clever drafting has created the illusion of a cause of action nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Chapter XI) and must be triggered against them....."

It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or material(s) to sue, it is the duty of the trial Judge to exercise his power under Order VII Rule 11. If clever drafting has created the illusion of a cause of action as observed by Krishna Iyer J., in the above referred decision, it should be nipped in the bud at the first hearing by examining the parties under Order X of the Code. "

19. In order to decide the application filed by the appellant under Order 7 Rule 11 of the C.P.C., only the plaint is to be read and it has to be examined as to what is the cause of action sought to be agitated by the plaintiff and on that basis it has to be ascertained as to when limitation period for agitating grievance in respect of such cause of action has been triggered.....”

However, it is to be seen that he has admitted in the plaint that he came to know about said will in the year 2001 when the defendant No.1 had sent notice to the plaintiff and he has received the said notice. Then also 3 years expired in 2004 and the suit is barred by limitation. The observations made by the Hon'ble Apex Court in para 29 of Nikhila Divyang Mehta and others Hitesh P. Sanghvi and others reported in 2025(2) CTC

857 read as under:-

“29. Lastly, the first appellate Court has ruled that in the suit, the plaintiff has claimed different reliefs and even if the plaint is barred by limitation in respect of one of the reliefs, it cannot be rejected in toto. The aforesaid submission is also without substance as upon the plain reading of the prayers made in the plaint, it is apparent that the primary relief claimed therein is to declare the Will and the Codicil to be null and void and also all subsequent proceedings thereto. In addition to it, the plaintiff has claimed permanent injunction. The other reliefs are dependent upon the first relief and cannot be granted until and unless the plaintiff succeeds in the first relief. Therefore, once the

plaint or the suit in respect of the main relief stands barred by time, the other ancillary relief claimed therein also falls down.”

Reliance is also placed on the judgment in First Appeal No.784/2017 (Anand Madanmohan Jaiswal V/s. Prabibha and others), delivered on 22.9.2017.

The Hon’ble Apex Court in case of Shri Mukund Bhavan Trust and others V/s. Shriman Chhatrapati Udayan Raje Poratapsingh Maharaj Bhonsle and others reported in MANU/SC/1382/2024, in paragraph 26 has observed as under:-

“26. At this juncture, we wish to observe that we are not unmindful of the position of law that limitation is a mixed question of fact and law and the question of rejecting the plaint on that score has to be decided after weighing the evidence on record. However, in cases like this, where it is glaring from the plaint averments that the suit is hopelessly barred by limitation, the Courts should not be hesitant in granting the relief and drive the parties back to the trial Court. We again place it on record that this is not a case where any forgery or fabrication is committed which had recently come to the knowledge of the plaintiff. Rather, the plaintiff and his predecessors did not take any steps to assert their title and rights in time. The alleged cause of action is also found to be creation of fiction. However, the trial Court erroneously dismissed the application filed by the appellants under Order VII Rule 11(d) of Code of Civil Procedure. The High Court also erred in

affirming the same, keeping the question of limitation open to be considered by the trial Court after considering the evidence along with other issues, without deciding the core issue on the basis of the averments made by the Respondent No.1 in the Plaint as mandated by Order VII Rule 11 (d) of Code of Civil Procedure. The spirit and intention of Order VII Rule 11(d) of Code of Civil Procedure is only for the Courts to nip at its bud when any litigation ex facie appears to be a clear abuse of process. The Courts by being reluctant only cause more harm to the Defendants by forcing them to undergo the ordeal of leading evidence. Therefore, we hold that the plaint is liable to be rejected at the threshold.”

9. In such circumstances, the application under Order VII Rule 11 of the C.P.C. is required to be allowed. Hence, interference at the hands of this Court is required. Accordingly, I pass the following order:-

- i) The civil revision application is allowed.
- ii) The order dated 03.01.2019 below Exh.48 passed by learned Joint Civil Judge, Junior Division, Nagpur is hereby quashed and set aside with no orders as to costs.
- iii) Rule accordingly.

(MRS.VRUSHALI V. JOSHI, J.)