



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

CIVIL REVISION APPLICATION NO.126/2022

Rajesh S/o Nagendranath Awasthi,
aged about 56 Yrs. Occ. Agriculturist,
R/o Mahaveer Nagar, Sutgirni Road,
Amravati, Tq. and Distt. Amravati.

... Applicant

- Versus -

1. Waman S/o Deoman Narale,
aged about 63 Yrs., Occ. Agriculturist,
R/o Kawtha, Tq. Balapur,
Distt. Akola.

2. ~~Geeta Sanjay Trivedi,~~
~~aged adult, Occu. Household.~~

3. ~~Subhash Deokrushna Awasthi,~~
~~aged adult, Occu. Business.~~

~~Both 2 and 3 R/o Vyankatesh Nagar,~~
~~Shegaon, Tq. Shegaon,~~
~~Distt. Buldhana.~~

4. ~~The Assistant Commissioner,~~
~~Social Welfare, Collector Office,~~
~~Akola, Tq. and Distt. Akola.~~

5. ~~Dhammpal Gautam Ghyare,~~
~~aged adult, Occu. Labour.~~

6. ~~Bhimrao Maroti Damodar,~~

~~aged adult, Occu. Labour.~~

7. ~~Kailash Namdeo Ingle,
aged adult, Occu. Labour.~~

~~5 to 7 are R/o Kawtha,
Tq. Balapur, Distt. Akola.~~

8. ~~State of Maharashtra,
Representing through District
Collector, Akola, Tq. and Distt.
Akola.~~

(Non-applicant Nos.2
to 8 deleted vide order
dated 1.12.2022)

... Non-applicants

Mr. S.A. Mohta, Advocate for the applicant.

Ms. Seema P. Dhotre, Advocate for non-applicant No.1.

CORAM: MRS.VRUSHALI V. JOSHI, J.

DATE OF RESERVING THE JUDGMENT: 10.07.2025.

DATE OF RESERVING THE JUDGMENT: 28.07.2025.

JUDGMENT

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

2. Feeling aggrieved and dissatisfied with the impugned order dated 17.10.2022 passed by the learned 7th Joint Civil

Judge, Senior Division, Akola in R.C.S. No.406/2021 by which the learned trial Court rejected the application submitted by the original defendant seeking rejection of the plaint in exercise of powers under Order VII Rule 11(d) of the Code of Civil Procedure, applicant - the original defendant has preferred the present civil revision application.

3. The facts giving rise to the filing of the present application are as under:-

The present applicant and non-applicant Nos.2 and 3 are the legal heirs of Ramkumari Deokrushna Awasthi. Said Ramkumari was the owner and possessor of the suit land and was unable to cultivate the same due to old age. Therefore, a sale deed was scheduled to be executed on 15.03.1995 between her and non-applicant No.1 which did not take place due to negligence of applicant and the deceased owner Ramkumari Deokrushna Awasthi.

It is claimed by the non-applicant No.1 that said Ramkumari Deokrushna Awasthi had handed over possession of

suit land to him vide the agreement to sell executed on 13.06.1994 and that he is having peaceful possession over the suit property since last 25 years. It is contended by the non-applicant No.1 that the applicant is trying to dispossess him without following due procedure.

The applicant herein - original defendant after filing his written statement, filed an application under Order VII Rule 11 of C.P.C. for rejection of the plaint on the ground that the suit is barred by law of limitation as the parties agreed to execute the sale deed on 15.03.1995. Hence the suit under Article 54 of the Limitation Act ought to have been filed within three years from the date fixed for performance of the contract.

4. Learned Advocate for the applicant vehemently submitted that the learned trial Court failed to consider that the plaintiff himself pleaded in his plaint particularly in paragraph No.4 in respect of previous litigation and thus the plaintiff was very much having knowledge about the will deed executed in

favour of the applicant and thus the prayer of declaration that the will deed is false and barred by limitation.

5. Learned Advocate for the original plaintiff - non-applicant No.1 has vehemently opposed the present revision application. It is submitted that the plaintiff is having possession of the suit land since last 25 years. The possession of the present plaintiff is legal on the basis of agreement to sell and due to continuous sickness and continuous neglect by the applicant and the deceased owner, the sale deed could not be executed. There is no mistake or any neglect on the part of the original plaintiff. It is further submitted that by virtue of possession since last 25 years the original plaintiff has become a deemed owner by way of adverse possession and hence the application is not tenable in the eyes of law. Moreover, the applicant has produced the bogus will deed before the Revenue Authorities after lapse of 7 years. It is the stand taken by the applicant that he did not get time to do so. Therefore, it is crystal

clear that the will deed is nothing but a scrap document having no evidentiary value.

6. Heard both the learned Advocates and perused the record.

7. The non-applicant No.1 has filed the civil suit for specific performance of contract and permanent injunction. The non-applicant No.1 is in possession of the suit property which is not disputed as the suit for permanent injunction against the applicant is decreed in favour of the non-applicant and appeal is pending. There is no stay to said decree in appeal proceedings.

8. During the pendency of said appeal, the applicant has transferred the title in favour of the Assistant Commissioner, Social Welfare, Akola under registered sale deed dated 28.03.2019 and another transaction is made about said property by non-applicant No.4 Assistant Commissioner, Social Welfare, Akola issued notice to the plaintiff for handing over the

possession of the suit property on 12.03.2020. Though the plaintiff is claiming specific performance of the agreement to sell dated 13/6/1994, it is a fact that since then the plaintiff is in possession of the suit property. The possession of plaintiff is confirmed by the trial Court and it also proves through the notice issued on 12.3.2020.

9. On perusal of the plaint it appears that the 'cause of action' and 'subject matter' are co-related expressions governing the suit. The plaintiff has described the cause of action. The jurisdiction of the Court depends upon the averments made in the plaint and not upon defence in written statement is the settled principle of law. The applicant has placed reliance on the observations of the Hon'ble Supreme Court in case of Raghwendra Sharan Singh V/s. Ram Prasanna Singh (Dead) by L.Rs. reported in **2019 DGLS (SC) 421** which are follows:-

6.6 In the case of Sopan Sukhdeo Sable (supra) in paras 11 and 12, this Court has observed as under:-

“11. In I.T.C. Ltd. V/s. Debts Recovery Appellate Tribunal [(1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

12. 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.

10. On perusal of plaint it appears that the plaintiff has specifically claimed relief of declaration that the will deed dated 9.2.2001, the sale deed dated 28.3.2019 and the documents executed by the defendant No.4 in favour of defendant Nos.5 to 7 without knowledge of the plaintiff, who is in possession of the suit property, are null and void and not binding upon the plaintiff. Limitation is a question dependant upon facts and law. It is a mixed question of law and facts. As a disputed question about the application of law of limitation arises and it is mixed question of facts and law to decide the issue of limitation adjudication of facts

is required. Considering the settled law if the mixed question of facts and law is involved the trial Court should go slow and in trial issue of limitation is required to be decided. Hence the trial Court has rightly considered this fact and rejected the application. As I agree with the observations made by the trial Court interference at the hands of this Court is not required. Hence the application is rejected. No costs.

(MRS.VRUSHALI V. JOSHI, J.)