



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

CIVIL REVISION APPLICATION NO.130/2022

Ku. Manisha D/o Sanjay Band,
aged about 34 Years, Occu: Business,
R/o 10, Jaiprakash Nagar, Wardha
Road, Nagpur - 15, through its
Power of Attorney Holder Shri
Sanjay Gunwant Band.

.....(Original defendant)
.....Applicant.

- Versus -

1. Dinendraprasad S/o Trimbakprasad
Pandey (Subhedar), aged about 82
Years, Occu : Business, R/o Trambakam,
Shivrajpuri, Itarasi, District Hoshangabad,
Madhya Pradesh.(Original plaintiff)
2. Shyamsundar S/o Durgaprasad Tiwari,
aged about 79 Yrs., Occu : Business,
R/o Plot No.101, Gawandipura, Juna
Sakkardara, Behind Dighori Ghat,
Yogeshwar Nagar, Nagpur.
3. Smt. Nirmala Anilrao Dhole,
aged about 52 Yrs., Occu : Business,
R/o Near Hanuman Temple,
Gawandi Pura, Juna Sakkardara,
Nagpur. Non-applicants

Mr. R.R. Srivastava, Advocate for the applicant.

Mr. S.P. Kshirsagar, Advocate for non-applicant No.1.

CORAM: MRS.VRUSHALI V. JOSHI, J.

DATE OF RESERVING THE JUDGMENT: 14.07.2025.

DATE OF PRONOUNCING THE JUDGMENT: 12.08.2025.

JUDGMENT (Per Mrs. Vrushali V. Joshi, J.)

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

2. By way of present application, the applicant is invoking the revisional jurisdiction of this Court under Section 115 of the Code of Civil Procedure, 1908 being aggrieved by the impugned common order dated 16.9.2022 passed below Exh.18 and Exh.26 by 2nd Joint Civil Judge, Junior Division, Nagpur in Regular Civil Suit No.1291/2020.

3. Briefly stated, facts of the present case, are as under:-

It is submitted that after the death of father of non-applicant No.2, he became owner of the suit popery acquired by his late father through one Dudhnath Maharaj Guru Ramanandji Maharaj Nihang and thus, his name came to be corrected in the mutation entry vide order dated 29.07.2009

passed by the City Survey Officer No.2, Nagpur. Later on the non-applicant No.2 registered a sale deed in favour of the applicant. The applicant intended to raise a construction of residential multi-family dwelling units on the suit property for which he was granted permission by the Nagpur Municipal Corporation. The applicant started to raise construction on the said property. The non-applicant No.1/plaintiff proceeded to file a suit seeking relief of declaration that the mutation entry made by the Superintendent of Land Records in Revenue Appeal No.516/2009 be declared as null and void. Similarly, the original plaintiff also sought declaration that will deed dated 24.01.1961 executed in favour of the father of original defendant No.1 be declared null and void. Subsequently, the plaintiff claimed the decree of mandatory injunction against original defendant Nos.2 and 3 to remove the construction from the suit property and not to interfere in the legal possession of the suit property.

In Regular Civil Suit No.1291/2020 that both the applications have been moved by defendant No.2 under Order 7

Rule 11(b) of the Code of Civil Procedure, 1908 for rejection of the plaint. The grounds for rejection of plaint as stated by the defendant No.2 are as follows:-

- (i) The suit is undervalued and insufficient court fee has been paid,
- (ii) The valuation of the suit is more than one crore and only commercial Court has jurisdiction to try and entertain this suit i.e. this Court has no pecuniary jurisdiction,
- (iii) The plaint does not disclose the cause of action,
- (iv) The suit is barred and
- (v) The suit is expressly barred under Section 158 of the Maharashtra Land Revenue Code, 1966,

4. It is argued by the learned Advocate for the applicant Mr. Srivastava that there is an express bar challenging the entries/orders passed by the revenue authorities by filing a civil suit as per Section 158 of the Maharashtra Land Revenue Code, 1966. Further it is submitted that as per prayer clause (a) of the plaint the basic relief seeks to challenge the mutation entry made

by the Superintendent of Land Records. It is contended by the learned Advocate for the applicant that the plaintiff was throughout aware about the ownership and continuous possession of the defendants over the suit property and construction activity being undertaken over the same since a long time. It is further submitted by learned Advocate for the applicant Mr. Srivastava that challenge to the will deed dated 24.01.1961 is barred by limitation of law inasmuch the suit has been filed on 30.09.2020 and the period prescribed to challenge the document is three years as per Sections 56, 58 and 59 of the Limitation Act, 1963 and the suit for mandatory injunction is barred in view of Article 65 of the Limitation Act.

5. Learned Advocate for non-applicant No.1 Mr. Kshirsagar vehemently opposed the submissions made by the applicant. He contended that the suit property is ancestral property of non-applicant No.1 and the name of Dudhnath Maharaj Guru Ramanandji Maharaj Nihang was never in the revenue record or 7/12 extract of the suit property. It is submitted

that non-applicant No.2 was never the owner of the suit property, his father was simply care taker of the suit property, therefore, any sale deed executed by him in favour of the applicant does not confer any right upon the applicant of the said property. The non-applicant No.2 by manipulating the records from the City Survey Department has obtained the mutation entries and, therefore, cannot claim the right, title or interest over the suit property on the basis of the same mutation entries. It was for the first time in April 2020 it came to the knowledge of non-applicant No.1 that some construction is going over his property since he resides in Itarsi, Madhya Pradesh. Therefore, after he was having knowledge of the mutation entry on the basis of sale deed and will deed in the year 2020, the suit was filed before the learned trial Court to set aside all these illegal transactions.

6. In Civil Suit No.1291/2020, defendant Nos.2 and 3 have filed two applications for rejection of plaint under Order VII

Rule 11 of the Code of Civil Procedure. The prayers made in the civil suit are as follows:-

“(a) pass decree of declaration that the mutation entry made by the Superintendent of Land Records in Revenue Appeal No.516 of 2009 as nullity in law and it did not confer any right, title or interest in favour of defendant No.1 as defendant No.1 had no document of title or any predecessor of him as claimed by him, Dudharam Maharaj Guru Parmanand Maharaj and Durgaprasad S/o Narmadaprasad Tiwari has no title to get mutated their names in the Record of Rights, therefore, any transaction made by the defendant No.1 on the basis of mutation entry is not legal and valid and hence, it is not binding upon the plaintiff and further declare that Will Deed dated 24/01/1961 made by Dudharam Maharaj Guru Parmanand Maharaj without having any title or interest in the suit property and hence, as null and void;

(b) pass decree of mandatory injunction in favour of plaintiff by ordering the defendant Nos.2 and 3 to remove the illegal construction/structure from the suit property and direct the defendant Nos.2 and 3 to hand over vacant possession of the suit property to the plaintiff;

(c) pass decree that the sale deeds dated 28/08/2013 and 18/04/2013 executed by the defendant No.1 in favour of defendant Nos.2 and 3 are not binding on the plaintiff as the said transactions are completely fraudulent and not tenable in law, no title is ever passed from the plaintiff or from the predecessor in title of the plaintiff to the

defendant Nos.2 and 3 and, therefore, the said sale deeds are ab initio void and not tenable in law;

(d) Pass decree of permanent injunction thereby restraining the defendant Nos.2 and 3, their servants, agents, mukhtyars, representatives or anybody on their behalf from creating any third party interest in the suit property and further restrained them from making any construction over the suit property, converting the nature of the suit property from open land since the sale deeds as claimed by them are nullity in law and not binding upon the plaintiff.

(e) The costs of the suit may be saddled on the defendants.

(f) Any other suitable relief to which the plaintiff is legally entitled may kindly be granted, in the interest of justice and in accordance with law.”

7. On perusal of the prayers, it appears that the declaration is sought that the mutation entry made by the Superintendent of Land Records in Revenue Appal No.516/2009 being nullity in law. There is bar as per the provisions of Maharashtra Land Revenue Code, 1966 to correct the entry in the revenue records. As per Section 155 of said Code, the Collector has a power to correct it and the civil Court has no jurisdiction. As per Section 158 of the said Code there is bar to entertain the

suit i.e. no suit shall be filed against the State Government or any of its officers in respect of claims related to entries in land records maintained under the Code. This effectively bars civil litigation concerning the making, omission, or amendment of entries in these records. Section 155 of the Maharashtra Land Revenue Code, 1966 provides for correction of clerical errors. The prayer is for correction of mutation entry. It appears from the record that the appeal was preferred and the notices were sent to the persons who were not in existence (against the dead persons). As the plaintiff is claiming the right under the Maharashtra Land Revenue Code, there is bar to such suit.

8. The next prayer is for mandatory injunction in favour of the plaintiff by ordering the defendant Nos.2 and 3 to remove the illegal construction/structure from the suit property and direct the defendant Nos.2 and 3 to hand over the vacant possession of the suit property to the plaintiff. The plaintiff is claiming his title over the suit property as owner and praying to declare the will deed executed in the year 1961 as null and void on the basis of

which the defendants have claimed right over the suit property. For claiming such relief, the limitation is of 3 years from the date of execution of such instrument. On the face of the document and this prayer, it appears that it is barred by limitation.

9. Another prayer is to declare that the sale deeds executed in favour of defendant Nos.2 and 3 by the defendant No.1 on 28.8.2013 and 18.4.2013 are not binding upon the plaintiff. Here also, the suit is barred by limitation for said prayer. The cause of action for filing the suit is mentioned as 31.5.2020 when the plaintiff came from Itarasi and he found that the construction was going on and at that time, he came to know about the execution of sale deeds and the entries in revenue record. Therefore, according to plaintiff, the suit is within limitation. The plaintiff is challenging the sale deeds dated 28.8.2013 and 18.4.2013. Limitation for challenging the instrument is 3 years from the date of its execution as per Article 59. Suit is filed on 31.5.2020 after period of 7 years. It is barred

by limitation. The applicant has placed reliance on Smt. Uma Devi and others V/s. Sri Anand Kumar and others reported in **2025 INSC 434**. The applicant has also relied on Ravi Bhaskar Wattamwar V/s. Babanrao Narbaji More @ Baba S/o Naru More and others reported in **2025(4) Mh.L.J. 356**. The Hon'ble Apex Court in para 27 of the judgment in case of Dahiben V/s. Arvinbhai Kalyanji Bhanusali (Gajra) Dead through Legal Representatives and others reported in **(2020) 7 SCC 366** has observed as under:-

“In Khatri Hotels (P) Ltd. v. Union of India this Court held that the use of the word ‘first’ between the words ‘sue’ and ‘accrued’, would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. That is, if there are successive violations of the right, it would not give rise to a fresh cause of action, and the suit will be liable to be dismissed, if it is beyond the period of limitation counted from the date when the right to sue first accrued.”

10. The objection raised by the defendants is that the proper court fee is not paid by the plaintiff on the market value of the suit property as he is challenging the sale deeds, which is

according to defendants, market value of said property is more than Rs.1 Crore and, therefore, Civil Judge, Junior Division has no jurisdiction and the commercial Court has jurisdiction to entertain the suit. On perusal of the record, it appears that the plaintiff is praying for declaration that the execution of sale deeds is not binding on him. He is not the executant of the sale deeds and he is not in possession of the property. He is claiming declaration, therefore, this objection cannot be considered. However, the suit is barred by law of limitation and as per the provisions of Maharashtra Land Revenue Code, 1966.

11. Therefore, the application is required to be allowed. The application is allowed. The impugned common order dated 16.09.2022 passed by 2nd Joint Civil Judge, Junior Division, Nagpur is quashed and set aside. Rule accordingly. No costs.

(MRS.VRUSHALI V. JOSHI, J.)