



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

CIVIL REVISION APPLICATION NO.104 OF 2019

Applicant : Sushil s/o Sohanlal Agrawal,
 (Original
 Defendant No.1 on R.A) Aged about 58 years, Occ. Business & Agriculturist,
 R/o 234, Middle Ring Road, East Wardhaman Nagar,
 Nagpur.
 – Versus –

Non-Applicants : 1. Naresh Hanumanprasad Agrawal,
 (Original Plaintiff on R.A.) Age 60 years, Occ. Business,
 R/o 504, 5th Floor, Satyam Exotica, Hajaripahad,
 Nagpur.

(Original Plaintiff on R.A.) 2. Aniruddha s/o Ashokkumar Kar,
 Age 48 years, Occ. Business,
 R/o Plot No.92, Bhupesh Nagar, Katol Road, Nagpur.

(Original Defendant No.2
 on R.A.) 3. M/s. Orange City Casting,
 a Partnership Firm acting through its Partner
 Shri Suresh Mahavirprasad Chobdar,
 R/o C/o Balaji Rolling Mill, Near Murli Agro, MIDC,
 Hingna Road, Nagpur and
 Partner Bhavani Shankar Motilal Chobdar,
 Age 53 years, Occ. Business, R/o Poonam Apartment,
 Shankar Nagar, Nagpur.

 Mr. M.G. Bhangde, Senior Advocate assisted by
 Mr. D.N. Mehta, Advocate for the Applicant.
 Mr. P.R. Agrawal, Advocate for Non-Applicant Nos.1 & 2.
 None for Non-Applicant No.3.

CORAM : **ROHIT W. JOSHI, J.**
DATE : **8th SEPTEMBER, 2025.**

ORAL JUDGMENT :

01. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the parties.

02. The present applicant is defendant No.1 in a suit filed by the present non-applicant Nos.1 and 2 being R.C.S. No.640/2018. The present non-applicant No.3 is defendant No.2 in the said suit.

03. Non-applicant No.3 had purchased land bearing Kh. No.46 admeasuring 2.02 HR situated at Village Nildoh, Tahsil Hingna, District Nagpur from one Gulabrao Pardhi vide registered sale-deed dated 24/12/1998. The applicant had purchased the suit property from non-applicant No.3 vide registered sale-deed dated 29/01/2001. The applicant had filed a suit being Special Civil Suit No.746/2011 against non-applicant Nos.1 and 2 and three others seeking decree of possession with respect to 1462 sq.meters of land out of Survey No.47/6 stating that non-applicant Nos.1 and 2 were in unlawful possession of the same. The said suit filed by the applicant was decreed vide judgment and order dated 01/01/2018 passed by the learned 3rd Joint Civil Judge, Senior Division, Nagpur. Non-applicant Nos.1 and 2 have filed appeal challenging the decree of possession being Regular Civil Appeal No.115/2018, which is pending for adjudication before the learned District Court at Nagpur. In this backdrop, non-applicant Nos.1 and 2 filed a suit being Special Civil Suit No.640/2018

inter alia challenging the sale-deed dated 24/12/1998 executed by Gulabrao Pardhi in favour of non-applicant No.3 as also sale-deed dated 29/01/2001 executed by non-applicant No.3 in favour of the applicant. The sale-deeds are challenged on the ground of fraud. It is alleged that the vendor of non-applicant No.3 viz. Gulabrao was the owner of agricultural land bearing Kh. No.92/1, 92/2 and 92/3 (corresponding new Kh.Nos.46, 47 and 48), totally admeasuring 9.10 acres. It is alleged that Gulabrao had sold 2.00 acres, 1.4 acres, 1.75 acres and 1.75 acres of land to various individuals prior to execution of sale-deeds in favour of non-applicant No.3 and 0.45 acre of land was acquired by the Government and as such he was having only 1.75 acres of land remaining with him as on the date of execution of sale-deed dated 24/12/1998 in favour of non-applicant No.3.

04. It is alleged that one Suresh Mahavirprasad Chobdar, partner of non-applicant No.3 had purchased only 1.75 acres of land from its owner Gulabrao and yet he had prepared a fraudulent sale-deeds with respect to 2.02 HR i.e. 5 acres of land. It is accordingly contended that non-applicant No.3 obtained sale-deeds by practicing fraud. It is also alleged that the applicant was also aware about the said fact and yet he ventured to purchase the property bearing Kh No.46 admeasuring 2.02 HR i.e. 5 acres from non-applicant No.3. It is averred that on the basis of this false sale-deed, the applicant filed a suit for possession against non-

applicant Nos.1 and 2 and three others being S.C.S. No.746/2011 and obtained decree for possession fraudulently. It is stated in paragraph 11 of the plaint that cause of action for filing the suit arose on 01/01/2018 i.e. the date on which the decree for possession was passed in favour of the applicant in S.C.S. No.746 of 2011 on the basis of the fraudulent sale-deeds. It is further stated that since the legal right was infringed by virtue of said judgment and decree, the cause of action for filing the suit arose on the date on which the said judgment was delivered.

05. The applicant filed application (Exh.10) for rejection of plaint in the said suit under Order VII Rule 11(a) and (d) of the Code of Civil Procedure (C.P.C. for short). The applicant contends that the suit was clearly barred by limitation as could be seen apparent from the reading of the plaint in the said suit. It is contended that it was necessary for non-applicant Nos.1 and 2 to aver the date on which they got knowledge about the alleged fraudulent sale-deeds. The contention is that the date of knowledge of sale-deeds will give the cause of action for challenging the said sale-deeds and limitation for filing the suit will have to be computed from the date of execution of sale-deeds. As regards the averments in the plaint that the cause of action for filing the sale-deeds arose on 01/01/2018 i.e. the date on which the decree for possession was passed in S.C.S. No.746/2011, it is contended that non-applicant Nos.1 and 2 were

not seeking declaration that the judgment and decree in the said suit was obtained by fraud. It is also contended that the date of such judgment cannot be a starting point of limitation for the purpose of filing the suit in order to challenge the aforesaid sale-deeds.

06. Mr. M.G. Bhangde, learned Senior Advocate for the applicant strenuously argued that the judgment in suit for possession i.e. S.C.S. No.746/2011 will clearly demonstrate that non-applicant Nos.1 and 2 were aware about the disputed sale-deeds since long and had filed the suit challenging the sale-deeds after a period of around seven years at least from the date of knowledge of the sale-deeds. He, therefore, contends that the suit is clearly barred by limitation and, accordingly, the plaint is liable to be rejected. Referring to the plaint exhaustively, the learned Senior Advocate contends that non-applicant Nos.1 and 2 have purposefully not mentioned the date on which they got knowledge about the sale-deeds impugned in the suit. To buttress his submissions, the learned Senior Advocate has placed reliance on the following judgments :

1. *Dilboo (Smt.) (Dead) by L.Rs. and others vs. Dhanraji (Smt) (Dead) and others* – (2000) 7 SCC 702.
2. *Ram Prakash Gupta vs. Rajiv Kumar Gupta and others* – (2007) 10 SCC 59.
3. *C.S. Ramaswamy vs. VK. Senthil and others* – 2022 SCC OnLine SC 1330.
4. *K. Akbar Ali vs. K. Umar Khan and others* – (2021) 14 SCC 51

5. *Ashok Daga Patil vs. Daga Yadav Patil and others – 2003(1) Mh.L.J. 686.*
6. *Rajendra Vasudev Porob Dessai Deshprabhu Rauraje (since deceased by L.Rs.) and another vs. Sitadevi alias Jaya Raghuraj Deshprabhu and others – 2005 SCC OnLine Bom 1777.*
7. *Sarjit Singh Awla vs. Kuldeep Singh Awla – 2015 SCC OnLine Del 6544.*
8. *Renu Khhullar vs. Aaron @ Arun Bhandari and others – 2018 SCC OnLine Del 9115.*

07. *Per contra*, Mr. P.R. Agrawal, learned Advocate for non-applicant Nos.1 and 2 contends that limitation for filing the suit for cancellation of the sale-deeds would arise from the date on which the right of non-applicant Nos.1 and 2 would be adversely affected. The learned Advocate contends that the right of non-applicant Nos.1 and 2 was infringed in view of the decree for possession passed against them. He further contends that since the sale-deeds are obtained by fraud, the plaint cannot be rejected on the ground of limitation. He has placed reliance on the following judgments:

1. *P. Kumarakurubaran vs. P. narayanan and others – 2025 SCC OnLine SC 975.*
2. *C. Natarajan vs. Ashim Bai and another – AIR 2008 SC 363.*
3. *Gangaram Rambhau Zite and others vs. Chindhu Dagadu Tikone – 2002(2) Mh.L.J. 770.*
4. *Attaur Raheman Fateh Mohmmad vs. Hari Peeraji Burud died through L.Rs. Neelabai @ Chandrakala Haribhau and others – 2008(2) Mh.L.J. 633.*

5. *Vishnu Vardhan @ Vishnu Pradhan vs. The State of Uttar Pradesh and others – 2025 INSC 884.*
6. *Bishunath Tewari and others vs. Mst. Mirchi – 1955 AIR Patna 66.*
7. *Yanala Malleshwari and others vs. Ananthula Sayamma and others – 2006 SCC Online AP 909.*
8. *S.P. Changalvaraya Naidu (dead) by L.Rs. vs. Jagannath (dead) by L.Rs. - 1994(1) SCC 1.*
9. *Manibhai Chaturbhai Patel vs. Mahendrabhai Chaturbhai Patel – First Appeal No.1226 of 2020.*

08. Heard rival submissions as aforesaid. The contention of non-applicant Nos.1 and 2 is that the sale-deeds dated 24/12/1998 and 29/01/2001 are obtained by fraud. The foundation of the allegation of the fraud is that although Mr. Suresh Mahavirprasad Chobdar had purchased 1.75 acres of land only from its erstwhile owner Gulabrao Pardhi, area of property was fraudulently mentioned as 2.02 HR i.e. 5 acres. It is alleged that the applicant purchased the suit property from non-applicant No.3, although he was aware that non-applicant No.3 is the lawful owner of 1.75 acres of land only. The contention is that since the decree for possession is obtained on the basis of said sale-deeds, it is necessary to challenge the said sale-deeds and that limitation for filing of the suit will have to be computed from the date of judgment in the said suit.

09. The fact that non-applicant Nos.1 and 2 were aware about the impugned sale-deeds prior to the date on which S.C.S. No.746/2011 was

decreed against them cannot be disputed. S.C.S. No.746/2011 was filed by the applicant based on the impugned sale-deed dated 29/01/2001 executed in his favour by non-applicant No.3. Perusal of the judgment will also demonstrate that there is a reference to sale-deed dated 24/12/1998 executed in favour of non-applicant No.3 in the said judgment. Non-applicant Nos.1 and 2 contested the said suit by filing written statement.

10. In this context, it cannot be disputed that non-applicant Nos.1 and 2 were aware about the impugned sale-deeds before the judgment and decree dated 01/01/2018 passed in the said suit. Non-applicant Nos.1 and 2 have not disclosed the date on which they got knowledge of the impugned sale-deeds as also the date on which they got knowledge that the impugned sale-deeds were obtained by practicing fraud. In this regard, it must be mentioned that the limitation for challenging a registered document is three years. The suit is filed after a period of three years from the date of registration of sale-deeds. It was, therefore, necessary for non-applicant Nos.1 and 2 to clearly aver the date on which they got knowledge about the impugned sale-deeds and/or knowledge about the facts constituting the alleged fraud in relation to the said sale-deeds. As is rightly pointed out by the learned Senior Advocate for the applicant that the plaint is absolutely silent in this regard, it will be pertinent to mention

that even the learned trial Court has recorded in paragraph 11 of the order that the plaint is absolutely silent as regards the date on which non-applicant Nos.1 and 2 got knowledge about the disputed sale-deeds.

11. In this regard, it will be appropriate to refer to Articles 58 and 59 of the Limitations Act, which read as under :

Article	Description of Suit	Period of Limitation	Time from which period begins to run
58	To obtain any other declaration.	Three years	When the right to sue first accrues
59	To cancel or set aside an instrument or decree or for the rescission of a contract	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him

12. A suit for declaration is required to be filed within a period of three years from the date on which the right to sue first accrues. Article 59 prescribes limitation of three years for cancellation of an instrument and the period of limitation begins from the date on which the facts relevant for seeking cancellation of instrument becomes known to the plaintiff. It was, therefore, necessary for non-applicant Nos.1 & 2 to mention the date on which they got knowledge about the relevant facts in the plaint. In this regard, a reference can be had to the judgment of the Supreme Court in the matter of Ram Prakash Gupta (*supra*), wherein it is held that if the

plaint does not contain statement regarding limitation, the same is liable to be rejected. In the case of Ashok Daga Patil (*supra*), this Court was dealing with an application for amendment of plaint filed under Order VI Rule 17 of C.P.C. Amendment was sought to challenge a partition-deed. However, the application for amendment did not disclose the date on which the plaintiff came to know about the partition-deed. In this context, it was held that a suit for declaration regarding invalidity or illegality of the partition-deed was required to be filed within a period of three years from the date of knowledge of the deed and in absence of any averment with respect to the date of knowledge, the application for amendment was liable to be rejected, since it was filed beyond period of three years from the date of registration of the document. It is held that if the date of knowledge of the registered document is not mentioned in the pleading, the date of registration should be presumed to be the date of knowledge. Similar view is taken in another judgment of this Court in the matter of Rajendra Vasudev Porob (*supra*). In the said judgment, this Court was dealing with a suit with respect to some entries in the City Survey record, which were recorded on 29/12/1978 and the suit challenging the said entry was filed on 01/02/1990. Referring to the plaint, this Court held that specific date of knowledge was not enumerated in the plaint and a bald statement was made that knowledge with respect

to the relevant entry was received in the month of June, 1989. It was held that since specific date of knowledge was not mentioned in the plaint, the date of entry should be considered to be the date of knowledge. It will be pertinent to mention that the said judgment does not pertain to an application for rejection of plaint. Similar view with respect to pleading regarding date of knowledge of impugned document is taken by the Delhi High Court in the case of Sarjit Singh Awla (*supra*), wherein the plaint in a suit raising challenge to the relinquishment-deed dated 21/01/2008, which was filed in the year 2014 was rejected on the ground of limitation since the date of knowledge of the document was not mentioned in the plaint. Similar view with respect to necessity of mentioning the date of knowledge in the plaint is taken in the judgment of the Delhi High Court in the matter of Renu Khullar (*supra*).

13. It must be mentioned that although an application for rejection of plaint has to be decided on the basis of the plaint averments and the defence of the defendant cannot be looked into, it is well settled that the plaint must be read meaningfully along with the documents filed with the plaint, particularly the documents which are not in dispute. In the present case, the plaint repeatedly makes reference to the judgment dated 01/01/2018 passed in S.C.S. No.746/2011. In fact, it is pleaded that the cause of action for filing the suit arose on 01/01/2018 i.e. the date on

which the suit was decreed. Therefore, the plaint needs to be read along with the judgment in the said suit. It is clear from the judgment delivered in the aforesaid suit that the applicant had filed suit for possession on the basis of the sale-deed dated 29/01/2001 executed in his favour by the non-applicant No.3. Reference is also made to the sale-deed dated 24/12/1998 under which non-applicant No.3 purchased the property from its original owner Gulabrao. Thus, it cannot be disputed that non-applicants Nos.1 and 2 were aware about the impugned sale-deeds prior to 01/01/2018 i.e. the date of the judgment in the said suit. As stated above, the plaint is conspicuously silent about the date on which the relevant facts regarding alleged fraud in relation to execution of the alleged sale-deeds came to the knowledge of non-applicant Nos.1 and 2. It was imperative on the part of non-applicant Nos.1 and 2 to plead the said date in the plaint.

14. Perusal of plaint will indicate that the said date or the date of knowledge or even the tentative period on which the relevant facts came to the knowledge of non-applicant Nos.1 and 2, are not mentioned. It will be pertinent to state that the impugned sale-deeds are executed around 20 years and 17 years prior to the date of filing of the suit. It will be pertinent to state that Section 17 of the Limitation Act, 1963 specifically deals with effect of fraud or mistake. The said provision clearly states that the limitation in order to file a suit, where the relevant facts are concealed by

fraud, commences from the date on which the fraud is discovered. In the light of aforesaid judgments of the Hon'ble Supreme Court and this Court, it was necessary for non-applicant Nos.1 and 2 to plead the date of knowledge. In this regard, it will be appropriate to refer to the judgment of the Hon'ble Supreme Court in the matter of C.S. Ramaswamy (*supra*). In the said matter, a suit was filed after a period of around 10 years from the date of execution of the registered sale-deed. The sale-deed had a reference to an earlier suit, which was filed in the year 2006 to which the plaintiffs in the said suit were party. The said suit was decided in the year 2014 and immediately thereafter the suit, which formed the subject matter of the judgment delivered by the Hon'ble Supreme Court, was filed. The Hon'ble Supreme Court has held that the plaintiffs cannot take resort to clever drafting in order to bring the suits which are hopelessly barred by limitation within limitation.

15. As regards the judgments, on which the learned Advocate for non-applicant Nos.1 and 2 has placed reliance, it needs to be stated that in the matter of P. Kumarakurubaran (*supra*), the date of knowledge was specifically mentioned in the plaint. The issue was as regards correctness or otherwise of the said date. The Hon'ble Supreme Court has held that whether knowledge was gathered on a particular date or not is a matter of evidence and the same could not be decided while dealing with an

application under Order VII Rule 11 of C.P.C. In the matter of C. Natarajan, a suit was filed for declaration of title and possession based on a sale-deed. In the said suit, an application for rejection of plaint was filed on the ground that the suit was barred by limitation. The Hon'ble Supreme Court held that in view of Articles 64 and 65 of the Limitation Act, the burden of pleading and proving that the suit was filed beyond a period of 12 years was on the defendant and that, it was for the defendant to plead and prove that the suit filed for possession was barred by limitation. The said judgment is, therefore, not helpful to non-applicant Nos.2 and 3. The judgments in the matters of Gangaram Rambhau Zite; Attaur Raheman Fateh Mohmmad; Yanala Malleshwari; and S.P. Changalvaraya Naidu (*supra*) do not deal with the aspect of limitation. The judgment in the case of Vishnu Vardhan (*supra*) deals with the aspect of delay in filing S.L.P. against an order passed by the High Court and in that context, the Hon'ble Supreme Court has held that no Court can allow a person to retain advantage of something that is obtained by fraud.

16. In the case of Manibhai Chaturbhai Patel (*supra*), also the date of knowledge was mentioned in the plaint and the Gujarat High Court has held that the correctness or otherwise of the said averment made in the plaint cannot be ascertained while dealing with an application under Order VII Rule 11 of C.P.C. In the case of Bishunath Tewari (*supra*), the Patna

High Court was dealing with the provisions of Section 44 of the Evidence Act. The Court was dealing with the relevance of judgment delivered in another suit in view of Sections 40 to 43 of the Evidence Act. In this context, the Court has observed that if a judgment is obtained by fraud, the issue of fraud in obtaining the judgment can be set up as a collateral ground of attack and that is not necessary to have the judgment obtained by fraud reversed or set aside. The said judgment is clearly inapplicable to the facts of the present case, where relief of cancellation of sale-deed is sought on the ground that the same is obtained by fraud. The provisions of Section 44 of the Evidence Act are clearly not relevant in the present case.

17. It will be appropriate to mention that, according to non-applicant Nos.1 and 2, the cause of action for filing the suit arose on 01/01/2018 i.e. the date on which the decree for possession came to be passed in favour of the applicant. In this regard, it will be appropriate to refer to the judgment of the Hon'ble Supreme Court in the case of **Kamala Bakshi vs. Khairati Lal**, reported in **(2000) 3 SCC 681**, wherein in paragraph 11, it is held that a distinction must be drawn between cases in which by virtue of an order of the court a right accrues to a party to the lis, and cases in which the court merely lays bare the truth well within the knowledge of the parties. The Hon'ble Supreme Court has explained the circumstances in which the judgment delivered by a Court can give rise to

cause of action. It cannot be said that the facts regarding the alleged fraud came to the knowledge of non-applicant Nos.1 and 2 in view of the judgment delivered in the suit for possession filed by the applicant. Therefore, non-applicant Nos.1 and 2 cannot contend that the judgment and decree delivered in the said suit offers cause of action to them for filing the suit for challenging and seeking cancellation of the two impugned sale-deeds.

18. Thus, the plaint discloses that non-applicant Nos.1 and 2 were aware about the sale-deeds challenged in the suit from somewhere around in the year 2011, where the earlier suit for possession was filed, which was contested by them on merits. The sale-deeds are dated 24/12/1998 and 29/01/2001. In view of the judgment of the Hon'ble Apex Court relied upon by the applicant, it was necessary for non-applicant Nos.1 and 2 to disclose the date or at least the tentative period when they got knowledge about the relevant facts suggesting that the sale-deeds were obtained by practicing fraud. It is obvious that the knowledge about the sale-deeds is prior to the period of three years from the date of filing of the suit. Limitation prescribed for filing the suit for cancellation of sale-deeds is three years. In view of lack of any specific averment regarding the date of knowledge about relevant facts in respect of the alleged fraud coupled with a fact that knowledge of the sale-deeds can be positively inferred from the

judgment in the earlier suit, it must be held that the suit is barred by limitation and also that all the relevant facts constituting complete cause of action are not pleaded. It must be mentioned that the term 'cause of action' implies bundle of facts, which entitles a plaintiff to seek relief from the Court of law in accordance with law. The facts constituting rights are a part of the cause of action in the broader sense. However, the fact(s) constituting breach of rights is/are the essential part of cause of action, particularly for the purpose of computation of limitation. Having regard to the aforesaid, it needs to be held that the plaint on the face of it, does not disclose complete cause of action and is also apparently barred by law of limitation. The plaint is, therefore, liable to be rejected.

19. In view of the above, the Civil Revision Application is allowed. The order dated 07/06/2019 passed by the learned 3rd Joint Civil Judge Senior Division, Nagpur on application (Exh.10) in Special Civil Suit No.640/2018 is quashed and set aside and the plaint in the said suit is rejected under Order VII Rule 11(a) and (d) of C.P.C. Regular Civil Appeal No.115/2018 filed by non-applicant Nos.1 and 2 against the judgment and decree dated 01/01/2018 in Special Civil Suit No.746/2011 shall be decided on its own merits without being influenced by the observations made in the present judgment.

20. Rule is absolute in the above terms. The parties to bear their own costs.

(Rohit W. Joshi, J.)

**sandesh*