



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

CIVIL REVISION APPLICATION NO.113/2025

Shri Babarao Ramchandra Pissude and another
...Versus...
Smt. Usha Sahebrao Choudhary and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. Rohan Bhishikar & Mr. Vinay Bhangade, Advocates for applicants

CORAM : ROHIT W. JOSHI, J.
DATE : 01/10/2025

1. The applicants, who are the original defendant Nos.1 and 2 in Regular Civil Suit No.31/2022, which is a suit for partition and separate possession, had filed an application for rejection of plaint in the said suit vide Exh.39. The said application was rejected by the learned trial Court vide order dated 31/07/2025 which is impugned in the present revision application. The plaintiff who is sister of original defendant Nos.1 and 3 to 6 has filed a suit for partition and separate possession with respect to suit properties claiming that the same are joint Hindu Family properties of her father Ramchandra Pissude.

2. The learned Advocate for the applicants/original defendant Nos.1 and 2 contends that along with the plaint the plaintiff had filed several documents including 7/12 extract pertaining to one of the suit properties bearing Survey No.26. He points out that the said 7/12 extract was obtained by the plaintiff in the year 2012. Referring to the said document the learned Advocate contends that the said 7/12 extract makes a reference to Will dated 20/06/1996 executed by the father. He

contends that the plaintiff has not challenged the said Will and therefore, the plaint is liable to be rejected. He further contends that the plaintiff has not challenged the Will despite knowledge about the same in the year 2012 and that limitation of challenging the Will which is only 3 years had lapsed in the year 2015 itself and therefore, the suit for partition filed in the year 2022 was barred by limitation.

3. Since the application is filed under Order 7 Rule 11 of the Code of Civil Procedure the plaint averments will have to be assumed to be correct. The plaintiff has averred that the suit property is joint Hindu Family property of her father. Therefore, assuming that the father had executed a Will and the plaintiff had knowledge about the same in the year 2012 yet the Will will be valid only to the extent of share of the father in view of Section 30 of the Hindu Succession Act, 1956. Even if the Will is proved, the share to be allotted to the plaintiff may vary. In that view of the matter the plaint cannot be rejected on the ground that the Will is not challenged.

4. As regards limitation, the limitation for filing the suit for partition and separate possession is 12 years. The suit is admittedly filed within 12 years from the year 2012 when the plaintiff allegedly got knowledge about the Will. The suit, therefore, appears to be filed within limitation as per the plaint averments. The learned trial Court has not committed any jurisdictional error while passing the impugned order. The Civil Revision Application is, therefore, dismissed. No order as to costs.

(ROHIT W. JOSHI, J.)