



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

CIVIL REVISION APPLICATION NO. 111/2024

- (1) **Raju Shamrao Dhabre,**
Aged about 55 years, Occ. Agriculturist,
- (2) **Shailendra Shamrao Dhabre,**
Aged about 50 years, Occ. Agriculturist,
- (3) **Gunwant Shamrao Dhabre,**
Aged about 45 years, Occ. Agriculturist,

All R/o. Plot No. 29, Imam Wada,
Near Ashok Buddha Vihar, Great Nag Road, Nagpur

.... **APPLICANT(S)**

// VERSUS //

- (1) **Pramila Wd/o Vandeo Dhabre,**
Aged about 62 years, Occ. Household
- (2) **Sumedh S/o Vandeo Dhabre,**
Aged about 35 years, Occ. Service,
- (3) **Shubhangi Wd/o Aatish Dhabre,**
Aged about 36 years, Occ. Service,
- (4) **Deepa W/o Manish Patil,**
Aged about 32 years, Occ. Household,

All R/o. Plot No. 183, Kukdey Layout,
Gajbhiye Building, Nagpur 440 027

.... **RESPONDENT(S)**

Shri D.L. Dharmadhikari and Shri R.M. Pande, Advocates for the
Applicant(s)
Shri V.R. Thote, Advocate for the Respondents

CORAM : M.S. JAWALKAR, J.
APRIL 25, 2025

ORAL JUDGMENT:-

. Heard learned Counsel for the respective parties.

(2) The present Civil Revision Application is filed by the Applicants being aggrieved by the order dated 01/09/2023 passed below Exhibit 19-A in the Regular Civil Suit No. 79/2023 by the learned 14th Joint Civil Judge Senior Division, Nagpur whereby the Application filed by the present Applicants/Defendants under Order VII Rules 11(a) and (d) read with Section 151 of the Civil Procedure Code, 1908 came to be rejected.

(3) There was Partition-Deed between Shri Shamrao Raghunath Dhabre and Shri Vandeo Raghunath Dhabre. The said Partition-Deed is challenged in the year 2023. Out of 3.90 HR

land, 2 hectare land was sold by Hari Dhabre in the year 1967. Vandeo expired on 05/09/2011. He did not challenge the said Partition-Deed in his life time. After his death also, the Plaintiffs i.e. the legal representatives of Vandeo, have not challenged the said Partition-Deed till 2023. Though medical grounds i.e. mental illness is pleaded in the Plaint, not a single document is placed on record. The Plaintiffs are not sure whether Vandeo was serving in Ordinance factory or Western CoalFields Limited.

(4) On perusal of the Plaint, it appears that there is no whisper on which date the Plaintiffs got knowledge about the Partition-Deed. Even the notice given by the Plaintiffs does not give any cause of action nor any date about the knowledge.

(5) Learned Counsel for the Applicants relied on the judgment in the case of **C.S. Ramaswamy vs. V.K. Senthil & others, 2022 SCC OnLine SC 1330**, wherein the Hon'ble Apex Court considered various judgments on the issue of limitation. The Hon'ble Apex Court, in Paragraph No. 31, has held as under:-

“31. Even the averments and allegations in the plaint with respect to fraud are not supported by any further averments and allegations how the fraud has been committed/played. Mere stating in the plaint that a fraud has been played is not enough and the allegations of fraud must be specifically averred in the plaint, otherwise merely by using the word “fraud”, the plaintiffs would try to get the suits within the limitation, which otherwise may be barred by limitation. Therefore, even if the submission on behalf of the respondents – original plaintiffs that only the averments and allegations in the plaints are required to be considered at the time of deciding the application under Order VII Rule 11 CPC is accepted, in that case also by such vague allegations with respect to the date of knowledge, the plaintiffs cannot be permitted to challenge the documents after a period of 10 years. By such a clever drafting and using the word “fraud”, the plaintiffs have tried to bring the suits within the period of limitation invoking Section 17 of the limitation Act. The plaintiffs cannot be permitted to bring the suits within the period of limitation by clever drafting, which otherwise is barred by limitation.....”

(6) The Hon’ble Apex Court also placed reliance on the judgment in the case of **Sopan Sukhdeo Sable vs. Charity**

Commissioner, (2004) 3 SCC 137, wherein the Hon'ble Apex Court, in Paragraph Nos. 11 and 12, has held as under:-

“11. In ITC Ltd. v. Debts Recovery Appellate Tribunal [ITC Ltd. v. 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. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code.

(7) Learned Counsel for the Applicants also placed reliance on the judgment in the case of **Shri Mukund Bhavan Trust & others vs. Shrimant Chhatrapati Udayan Raje**

Pratapsinh Maharaj Bhonsle & another, 2024 SCC OnLine SC 3844, wherein the Hon'ble Apex Court, in Paragraph No. 26, has held 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 CPC. 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 CPC. The spirit and intention of Order VII Rule 11(d) of CPC 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.”

(8) Learned Counsel for the Respondents fairly conceded that there is no date given either in the notice or in the pleading about the knowledge of the Partition-Deed. In absence of the pleadings or supporting documents, evidence cannot be led by the Respondents.

(9) As such, the finding recorded by the learned Joint Civil Judge Senior Division on the issue of limitation is a mixed question of law and fact and it can be decided after giving an opportunity to the parties to lead evidence is erroneous. The learned Trial Court ought to have considered this fact that in absence of the pleadings and supporting documents, the evidence cannot be led. As such, there is no question of leading evidence.

Therefore, the Suit is liable to be rejected under Order VII Rules 11(a) and (d) of the Civil Procedure Code, 1908.

(10) Hence, I proceed to pass following order:-

ORDER

(a) The Civil Revision Application is **allowed**.

(b) The order dated 01/09/2023 passed below Exhibit 19-A in the Regular Civil Suit No. 79/2023 by the learned 14th Joint Civil Judge Senior Division, Nagpur is hereby quashed and set aside.

(c) The Application below Exhibit 19-A in Special Civil Suit No. 79/2023 is hereby allowed and the Plaint is hereby rejected under Order VII Rules 11(a) and (d) of the Civil Procedure Code, 1908.

The Civil Revision Application stands **disposed of** in the above terms. Pending Application(s), if any, stand(s) **disposed of**.

(M.S. JAWALKAR, J.)