



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

CIVIL REVISION APPLICATION NO.10 OF 2024

Sau. Kusum Parasram Kullarkar,
Aged about 64 years, Occu. Household,
R/o. Plot No. 95, Chitnis Nagar, In front of
Motha Taj Bag, Nagpur – 440 034

Applicant
(Ori. Defendant)

-Versus-

Shri Madhukar S/o. Pandhari Kullarkar,
aged about 74 years, Occ. Retired,
R/o. Plot No.101, New Malghi Nagar,
Nagpur – 440 034

Non-applicant
*(Original
Plaintiff)*

Mr. Shantikumar Shivshankar Sharma, counsel for the applicant
Mr.S.P.Kshirsagar, counsel for non-applicant.

CORAM :MRS. VRUSHALI V. JOSHI, J.

Judgment reserved on : 15.07.2025
Judgment pronounced on : 22.07.2025

JUDGMENT:-

- 1) Heard.
- 2) **Rule.** Rule made returnable forthwith. The Civil Revision Application is heard finally with the consent of the learned counsel appearing for the parties.
- 3) Being aggrieved by the order passed by the Joint Civil Judge Junior Division, Nagpur in Civil Suit No.971 of 2019 rejecting the

plaint of the applicant under Order VII Rule 11(d) of the Civil Procedure Code, the applicant has filed this application.

4) The non-applicant has filed the suit for declaration that the sale deed dated 26.06.1991 with respect to the suit plot is not binding on him and same is fraudulent and does not create any title in favour of the defendant.

5) The second prayer is about decree of possession of the suit property and permanent injunction.

6) It is the case of the applicant (original defendant) that on 29.08.2008, he came to know about the sale deed executed in favour of the non-applicant(original plaintiff). The non applicant has pleaded that he has issued legal notice dated 08.10.2008, calling upon the present applicant to cancel fraudulent sale deed dated 26.06.1991. He has further sought declaration that the alleged sale deed is not binding on him as has not been executed by him and as such, has sought declaration with respect to sale deed being sham, bogus document. It is also averred by the plaintiff that the cause of action has accrued on 28.08.2008, when the plaintiff received the knowledge that the suit plot was purchased from somebody by the defendant. The non-applicant was aware about the sale deed dated on 28.08.2008, which he has challenged by filing suit on 09.07.2019 by praying to recover the

possession on the basis of title, which is auxiliary to the relief prayed by him.

7) It is argued by the counsel for the applicant that the suit is barred by limitation from bare perusal of the pleadings in the plaint itself. As per Article 56 of the Limitation Act under its Part III, suit relating to the declaration of forgery of an instrument issued or registered provides limitation for three years from the date on which such issuance or registration came to the knowledge of the plaintiff.

8) The cause of action cannot be relied on the auxiliary relief, which is for declaration of title and possession. The suit is filed after a long period of eleven years, which is barred by limitation on the ground that plaintiff has specifically pleaded that he got the knowledge about execution of sale deed dated 28.08.2008. Hence prayed to set aside the order passed by the trial court by allowing this application.

9) The learned counsel appearing for the non-applicant has stated that the plaintiff is claiming the possession of the suit property and for possession, the limitation is 12 years from the date of knowledge. Therefore, the suit is within limitation.

10) Heard the learned counsel appearing for the respective parties.

11) On perusal of the plaint, it reveals that as per prayer clause 1, the plaintiff has prayed for declaration of sale deed dated 26.06.1991, which is not binding on plaintiff, as it is fraudulent. Allegations about execution of said sale deed by personation is made against defendant. If only declaration is sought then the limitation is three years from the date of execution of said instrument or from the date of knowledge. However, if allegations of fraud are there then it is 12 years.

12) The applicant has placed reliance on the judgment of *Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by Legal Representatives in 2020 (16) SCC 601* in support of his argument that by inserting word '*fraud*' if the plaintiff tried to bring the case within limitation, then it is the case of clever drafting. It is observed by the Hon'ble Apex Court (supra) by relying on the judgment in the case of *N.V.Shrinivasa Murthy Vs. Mariyamma reported in (2005) 5 SCC 548* as well as in the case of *Ram Prakash Gupta V. Rajiv Kumar Gupta*, reported in *(2007) 10 SCC 59*, if it is found from the averments of plaint that the suit is clearly barred by law of limitation, the same can be rejected in exercise of power under Order VII Rule 11(d) of the CPC. It is also observed by the Hon'ble Apex court in *C.S. Ramaswamy Vs. V.K. Senthil and Others reported in 2022 DGLS(SC) 1273:-*

7.9 Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order VII Rule 11 CPC to the facts of the case on hand and the averments in the plaints, we are of the opinion that both the Courts below have materially erred in not rejecting the plaints in exercise of powers under Order VII Rule 11(d)CPC. The respective suits have been filed after a period of 10 years from the date of execution of the registered sale deeds. It is to be noted that one suit was filed by the minor, which was filed in the year 2006, in which some of the plaintiffs herein were also party to the said suit and in the said suit, there was a specific reference to the Sale Deed dated 19.09.2005 and the said suit came to be dismissed in the year 2014 and immediately thereafter the present suits have been filed. Thus, from the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting, the plaintiffs have tried to bring the suits within the period of limitation, which otherwise are barred by limitation. Therefore, considering the decisions of this Court in the case of T.Arivandandam (supra) and other decision of Raghwendra Sharan Singh (supra), and as the respective suits are barred by the law of limitation, the respective plaints are required to be rejected in exercise of powers under Order VII Rule 11 CPC.

13) In case in hand serious allegations of fraud by personation are made. Second prayer is for possession. The limitation for suit for possession is 12 years and when the instrument is challenged on the basis of fraud, as per Section 17 (1) of the Limitation Act,1963 the limitation is 12 years. From the plain reading of the plaint it appears that it is not a case of clever drafting to bring the suit in limitation but the prayer shows that the same is for possession. Hence, it is within limitation as per Article 64 of the Limitation Act,1963.

14) Hence there is no substance in the revision application. The Civil Revision Application stands dismissed.

15) Rule stands discharged.

(MRS.VRUSHALI V. JOSHI, J)