



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

CIVIL REVISION APPLICATION NO. 71 OF 2024

Smt. Nalini W/o. Laxman Rokde,
Aged about 55 years, Occ. Private,
R/o. Plot No. 201, Opposite Swami Narayan
School, East Wardhaman Nagar, Nagpur.

. . . **APPLICANT**
(Ori. defendant no. 1)

// VERSUS //

1. Smt. Madhuri W/o. Murlidhar Patil,
Aged about 52 years, Occ. Household,
R/o. Plot No. 48-E, Ganesh Nagar,
Behind Tejaswini Convent, Nagpur

. . . (Ori. Plaintiff no. 1)

2. Smt. Sangita W/o. Prakash Chaple,
Aged about 50 years, Occ. Household,
R/o. Plot No. 19, Ramkrushna Nagar,
Ajani Chowk, Nagpur.

. . . (Ori. Plaintiff no. 2)

3. Smt. Shraddha W/o. Amol Girde,
Aged about 34 years, Occ. Household,
R/o. Plot No. 375, North Ambazari Road,
Behind Cafe Cofee Day, Gandhi Nagar,
Nagpur.

. . . (Ori. Plaintiff no. 3)

4. Shri Moreshwar S/o. Marotraoji Dhage,
Aged about 70 years, Occ. Agricultural,
R/o. Plot No.7, Ramkrushna Nagar,
Ajani Chowk, Wardha Road, Nagpur.

. . . (Ori. defendant no. 2)

. . . **NON-APPLICANTS**

Shri Prakash Randive, Advocate for applicant.
Shri Sunil Manohar, Senior Advocate a/w. Shri R. R. Deo, Advocate for
non-applicant nos. 1 to 3.

CORAM :- M. W. CHANDWANI, J.

DATED :- 14.08.2025

ORAL JUDGMENT :-

Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsels for the parties.

3. Rejection of the application (Exh. 24) by the Civil Judge Junior Division, Nagpur in RCS No. 1024/2018 vide impugned order dated 17.01.2024 filed under Order 7, Rule 11 of the Code of Civil Procedure (CPC) for rejection of plaint is challenged in this civil revision application.

4. The thumbnail sketch of the facts is as under:-

i) Non-applicant nos. 1 to 3 (original plaintiffs) filed a suit for declaration, cancellation of sale-deed and permanent injunction on the premise that their father/non-applicant no. 4 (original defendant no. 2) received the suit property under partition of the ancestral property in the year 1968 and they were in peaceful possession of the suit property since then. However, they recently came to know that their father had sold the suit property to the applicant original defendant no. 1 when they received a notice from the City Survey Department, Nagpur for demarcation and sub-division of the suit property and hence, they filed the aforesaid suit.

ii) The applicant appeared in the suit and filed an application (Exh. 24) for rejection of plaint under Order 7, Rule 11 of the CPC on various grounds such as deficient court fees, law of limitation and the fact that non-applicant nos. 1 to 3 being the daughters of non-applicant no. 4 cannot challenge the sale transaction of their father during the lifetime of their father and hence, they have no right, title or interest in the suit property as the suit property is being held by their father. The Trial Court rejected the application (Exh.24) filed by the applicant vide impugned order dated 17.01.2024. Feeling aggrieved with the rejection of the said application, the present revision came to be filed.

5. Mr. Randive, learned counsel appearing for the applicant submitted that the sale-deed which was executed in the year 1991 has been challenged in the year 2018 i.e. almost 27 years after the execution of the sale-deed by the father of non-applicant nos. 1 to 3 in favour of the applicant. According to him, a suit for cancellation of sale-deed is to be filed within three years from the date of the sale-deed. Therefore, according to him, the suit is barred by law of limitation and hence, the suit cannot proceed and the plaint is liable to be rejected under Order 7, Rule 11(d) of the CPC on this ground alone.

6. Next, Mr. Randive vehemently submitted that the father of non-applicant nos. 1 to 3 is alive and during his lifetime, his

sons/daughters do not have any right, title or interest in the property held by him. According to him, even if it is admitted that the suit property is an ancestral property then also the daughters do not have any right, title or interest in the suit property held by their father. Therefore, the suit is barred by law and cannot proceed further.

7. Lastly, Mr. Randive submitted that the property received by the father of the non-applicant nos. 1 to 3 in partition cannot be termed as an ancestral property. He vehemently submitted that after 1956, a property received by way of partition by any Hindu male cannot be termed as an ancestral property and the son/daughter of a Hindu male cannot have birth right in the said property during the lifetime of the father. After the death of the father, Section 8 of the Hindu Succession Act, 1956 (for short, “the Act of 1956”) will be applicable and they will inherit the property as per Section 8 of the Act of 1956. Therefore, the suit filed by the non-applicant nos. 1 to 3/daughters for cancellation of the sale-deed executed by their father is not maintainable under the eyes of law and the plaint is liable to be rejected under Order 7, Rule 11 (d) of the CPC.

8. *Per contra*, Mr. Sunil Manohar, learned Senior Advocate appearing for non-applicant nos. 1 to 3, firstly submitted that the suit filed by non-applicant nos. 1 to 3 has composite prayers. According to

him, the suit has been filed not only for cancellation of the sale-deed but also for injunction to restrain the applicant from disturbing peaceful possession of the suit property. Another relief prayed is that the applicant should not dispossess them forcibly without following due process of law. According to him, the plaint cannot be rejected partly. He went on to submit that even if the ground for rejection of plaint is made out by the applicant, the plaint cannot be rejected partially *vis-a-vis* suit for cancellation and declaration. The basic pleadings along with the prayer with regard to injunction still persist and the suit will have to be tried. The law with regard to partial rejection of plaint has already developed through a series of decisions. To buttress his submission, he seeks to rely on the decision in the cases of *Sejal Glass Limited Vs. Navilan Merchants Pvt. Ltd.* ¹ and *Madhav Prasad Aggarwal and another Vs. Axis Bank Limited and another* ².

9. Mr. Manohar submitted that for deciding the application for rejection of plaint, the averments made by the plaintiff in the plaint are to be considered and the defense of the defendant cannot be considered at this stage. In the first place, the learned Senior Counsel vehemently submitted that the question of limitation is a mixed question of facts as well as law. Therefore, it is a matter of trial and

¹ (2018) 11 SCC 780

² (2019) 7 SCC 158

hence, the Trial Court has rightly rejected the application for rejection of plaint. He submitted that even the plaint reveals that non-applicant nos. 1 to 3 came to know about the alleged sale-deed in the year 2018 and in the very same year, the suit for cancellation of the sale-deed has been filed. To buttress his submission, he seeks to rely on Article 59 of Schedule-IV of the Limitation Act, 1963. Therefore, according to him, the suit is well within limitation.

10. Lastly, the learned Senior Advocate submitted that non-applicant nos. 1 to 3 have claimed in the plaint that the suit property is an ancestral property and by virtue of the amendment to Section 6 of the Act of 1956, non-applicant nos. 1 to 3, who are the daughters of Moreswar Marotraoji Dhage (original defendant no. 2), became coparceners in the suit property. Therefore, they have right, title and interest in the suit property being an ancestral property. According to him, the plaint alleged that the suit property is an ancestral property and whether it is a self acquired or an ancestral property can be decided at the time of trial. At this stage, this issue cannot be agitated and cannot be made a ground for rejection of the plaint. According to him, disposal of ancestral property cannot be done by one of the members/coparceners without the consent of other members/coparceners and therefore, it is the very basis of the suit which has been filed by non-applicant nos. 1 to 3. Hence, the sum and

substance of the argument of the learned Senior Advocate that the Trial Court has rightly rejected the application of the applicant and prayed for dismissal of the present application.

11. Having heard the counsels for the respective parties, I have gone through the impugned order and the record and proceedings. It is a settled law that while deciding the issue of rejection of plaint, the averments made in the plaint are of prime consideration. Therefore, it is necessary to see what has been averred in the plaint by non-applicant nos. 1 to 3.

12. The plaint depicts that, by virtue of partition of the ancestral property in the year 1988 between non-applicant no.4 - Moreshwar Dhage and his father and brothers, the suit property fell in the share of the father of non-applicant nos. 1 to 3 i.e. non-applicant no. 4. The plaint further depicts that, being the daughters of non applicant no. 4, non-applicant nos.1 to 3 have equal right, title and interest in the suit property which is claimed by them as ancestral property and pleaded that they are also in joint possession of the suit property along with non-applicant no. 4. It is also contended in the plaint that, in May-2018, non-applicant nos.1 to 3 got knowledge about execution of the sale-deed when their father/non-applicant no. 4 received a notice from the City Survey Department, Nagpur with

respect to demarcation and sub-division of the said land. It is also claimed that the said sale-deed is executed by their father/non-applicant no. 4, who has no exclusive right, title and interest in the suit property to execute the sale-deed without consent and permission of other coparceners/joint owners of the suit property. Apart from other contentions, the plaint further depicts that the applicant is trying to forcibly dispossess the non-applicants by taking possession of the suit property. Therefore, it was prayed that the applicant shall be restrained from forcibly dispossessing the non-applicants.

13. Thus, from the averments made in the plaint, it can be seen that apart from seeking a declaration that the sale-deed dated 05.10.1991 executed by non-applicant no. 4 in favour of the applicant is illegal, contrary to law and not binding on non-applicant nos. 1 to 3; seeking cancellation of the sale-deed, non-applicant nos. 1 to 3 have also sought a decree for permanent injunction requesting the Court to restrain the applicant from disturbing the peaceful possession of the non-applicants over the suit property without following due process of law.

14. A composite suit has been filed by non-applicant nos. 1 to 3 against the applicant and non-applicant no. 4 for declaration, cancellation of sale-deed and injunction. Needless to mention that a

plaint cannot be rejected in part. It is only where the plaint fails as a whole under any of the clauses mentioned in Order 7, Rule 11 of the CPC can the plaint be rejected. However, where it appears that the plaint cannot proceed for some parts but it can proceed with other parts, then Order 7, Rule 11 of the CPC has no application and the plaint cannot be rejected. A reference can be made to the decision in the case of ***Sejal Glass Limited*** (supra) and ***Madhav Prasad Aggarwal*** (supra).

15. In the present case, the applicant has come up with a case that the plaint is not maintainable with regard to the reliefs of declaration and cancellation of sale-deed but non-applicant nos. 1 to 3 are claiming to be in possession of the suit property and apprehending dispossession from the suit property at the hands of the applicant without following due process of law. Therefore, even if the grounds raised in the application for rejection of plaint are accepted, still some part of the plaint *vis-a-vis* the claim for injunction made by non-applicant nos. 1 to 3 is to be tried. In view of the settled legal position as discussed above, the plaint cannot be rejected partially and therefore, I find force in the argument of the learned Senior Advocate for the non-applicants.

16. Going to the issue of limitation, it has been held by the Supreme Court in various judgments and more particularly, in the case of *Salim D. Agboatwala and others Vs. Shamalji Oddhavji Thakkar and others*³, that limitation is a mixed question of facts and law. In the present case, non-applicant nos. 1 to 3 have averred in the plaint that they got to know about execution of the sale-deed by their father in the year 2018 when they received the notice for demarcation and subdivision of the land. Therefore, they got knowledge about the sale-deed which, according to them is illegal, null and void and therefore, they questioned the sale-deed and also sought a declaration. It may happen that those averments made by non-applicant nos.1 to 3 in the plaint are found to be false but if they succeed in proving the aforesaid averments, then the issue of limitation cannot be answered against them. Therefore, all these questions are required to be gone into during the trial and hence, the plaint cannot be rejected under Order 7, Rule 11 of the CPC on this ground.

17. So far as the reliance placed by the applicant on the case of *C. S. Ramaswamy Vs. V.K. Senthil and others*⁴ is concerned, in that case the suit was filed by the parties to the sale-deed and in the suit, it was alleged in the plaint that the deeds were executed by playing fraud. However, in the present case, non-applicant nos. 1 to 3 are not

³ (2021) 17 SCC 100

⁴ 2022 AIR (SC) 4724

a party to the sale-deed and therefore, the ratio laid down in **C. S. Ramaswamy** (supra) cannot be applied to the present case.

18. Turning to the last ground on which great emphasis has been laid by the learned counsel for the applicant that during the lifetime of a father, son/daughter does not have any interest in the property held by the father, the learned counsel for the applicant has relied on the decision in the case of **Commissioner of Wealth Tax, Kanpur and ors. Vs. Chander Sen**⁵ wherein, the Supreme Court has held that the property which devolved upon a Hindu on the death of his father intestate after coming into force of the Hindu Succession Act, 1956 did not constitute Hindu Undivided Family (HUF) property consisting of his own branch including his sons. Reliance is also placed on the case of **Uttam Vs. Saubhag Sing and others**⁶ wherein, the Supreme Court has summarised the position with regard to ancestral property in para no. 18, which reads as under:-

“18.

(i) When a male Hindu dies after the commencement of the Hindu Succession Act, 1956, having at the time of his death an interest in Mitakshara coparcenary property, his interest in the property will devolve by survivorship upon the surviving members of the coparcenary (vide Section 6).

(ii) To proposition (i), an exception is contained in Section 30 Explanation of the Act, making it clear that notwithstanding anything contained in the Act, the interest of a male Hindu in Mitakshara coparcenary property is property that

5 1986 (3) SCC 567

6 2016 (4) SCC 68

can be disposed of by him by will or other testamentary disposition.

(iii) A second exception engrafted on proposition (i) is contained in the proviso to Section 6, which states that if such a male Hindu had died leaving behind a female relative specified in Class I of the Schedule or a male relative specified in that Class who claims through such female relative surviving him, then the interest of the deceased in the coparcenary property would devolve by testamentary or intestate succession, and not by survivorship.

(iv) In order to determine the share of the Hindu male coparcener who is governed by Section 6 proviso, a partition is effected by operation of law immediately before his death. In this partition, all the coparceners and the male Hindu's widow get a share in the joint family property.

(v) On the application of Section 8 of the Act, either by reason of the death of a male Hindu leaving self-acquired property or by the application of Section 6 proviso, such property would devolve only by intestacy and not survivorship.

(vi) On a conjoint reading of Sections 4, 8 and 19 of the Act, after joint family property has been distributed in accordance with section 8 on principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons who have succeeded to it as they hold the property as tenants in common and not as joint tenants."

19. Considering these observations, the learned counsel for the applicant submitted that after 1956, the property received by a father in partition cannot be said to be an ancestral property and therefore, a son/daughter cannot question the transaction, since they have no right, title or interest in the property held by their father during his lifetime. Nowhere, it is the case of the non-applicants that non-applicant no.4 got the property by inheritance under Section 8 of the Act of 1956. Therefore, the decisions relied upon by the counsel for the applicant will not apply here.

20 In the plaint, the non-applicant nos.1 to 3 specifically averred that non-applicant no. 4 received the suit property in partition of the ancestral property. Whether the said contention is correct or false will be decided during trial. Taking the averments made in the plaint as the gospel truth wherein, non-applicant nos. 1 to 3 alleged that the property is an ancestral property, in my view, the plaint cannot be rejected on the ground that the property is not an ancestral property but a self acquired property. The submission of the learned counsel for the applicant cannot sustain in view of the pleadings of the non-applicant nos. 1 to 3 because the law is well settled that each coparcener of the property has interest in the suit property.

21. The Trial Court has rightly held that the plaint cannot be rejected. No interference is required in the impugned order. The application is devoid of merits and hence, it is **dismissed**.

(M. W. CHANDWANI, J.)