

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

CIVIL REVISION APPLICATION NO.49 OF 2025

1. Prashant Bhagwandasji Bajoriya, (Deft.No.1)
Aged about 49 years, Occup.Business,
R/o in front of Office of District
Collector, Civil Lines, Yavatmal, Tq.
And District Yavatmal.
2. Smt. Sushilabai Bhagwandasji Bajoriya, (Ori.Deft No.2)
Aged about 73 years, Occup.Household,
R/o in front of Office of District
Collector, Civil Lines, Yavatmal, Tq.
And District Yavatmal.

Applicants.

-Versus-

1. Bharati Bharat Bajoriya, (Ori. Plaintiff No.1)
Aged about 48 years, Occ. Business.
2. Chetan Bharat Bajoriya, (Ori. Plaintiff No.2)
Aged about 25 years, Occup. Education,
Respondent Nos.1 and 2 R/o Bajoriya
Plaza, L.I.C.Chowk, Yavatmal, Taluka and
District Yavatmal.
3. Sau.Rita Ashok Vaid, (Ori. Defendant
No.3)
Aged about 52 years, Occupation:
Household, R/o 1203 B, Lokhandwala
Residency Tower, Dr.E.Mojes Road,
Worli, Mumbai-440 018.
4. Sau.Meena Jitendra Khetan, Aged 50 (Ori. Defendant
No.4)
years, Occup. Household, R/o B-10, Vikas
Ramchandra Galli, Malhad (West),
Mumbai-400096.
5. Pravin Vijay Rathod, (Ori. Defendant
No.5)
Aged about 64 years, Occup. Agriculturist,
R/o Mandvi, Tq. Kinwad District:Nanded.
6. Sau.Kalpana Parashram Aade, (Ori. Defendant
No.6)
Aged about 62 years,
Occupation:Household, R/o Darda Nagar,
Yavatmal, Taluka and District Yavatmal.
7. Sun and Sand Real Estate (Ori. Defendant
No.7)
Developers,Yavatmal Through Partner.

- A Shashank Chandrashekhar Deshmukh,
Aged about 46 years,
Occupation: Agriculturist, R/o Mack
Motors, Arni Road, Yavatmal.
- B Nikhil Sureshrao Jiraprue, Aged about 38
years, Occup. Agriculturist and Business,
R/o Dahiwalkar Plot Yavatmal.
- C. Nilesh Vijayrao Ghume, Aged about 46
years, Occupation: Agriculturist and
Business, R/o Pushpakunj Society,
Yavatmal.
- D. Avinash Shivdasrao Lokhande, Aged about
37 years, Occup. Agriculturist, R/o Parvati
Nagar, Yavatmal.
- E Pragati Rajesh Bhagat, Aged about 40
years, Occup. Agriculturist and Business,
R/o Sidhivinayak Sankul, Arni Road,
Yavatmal. Non-applicants.

Mr.A.C.Dharmadhikari, Adv.for the applicants.
Mr.S.S.Sohoni, Adv. for non-applicant Nos.1 and 2.
Mr.A.B.Nakshane, counsel for non applicant No.6.
Mr.M.I.Dhatrak counsel for respondent Nos.7-A to 7-E.

CORAM :MRS. VRUSHALI V. JOSHI, J.

Judgment reserved on : 14.07.2025

Judgment pronounced on : 12.08.2025

JUDGMENT:-

1) **Heard.**

2) **Rule.** Rule made returnable forthwith. This Civil Revision Application is heard finally with the consent of the learned counsel appearing for the parties.

3) By the present Civil Revision Application, the applicants/original defendant Nos.1 and 2 have challenged the legality and correctness of the order dated 20.05.2025, passed by the Civil Judge Senior Division, Yavatmal in Special Civil Suit No.21 of 2017. The applicants have filed the application under Order VII Rule 11 (a) and (d) read with Section 151 of the Code of Civil Procedure Code, 1908 stating that the suit is barred by law. The Trial Court has rejected the said application. Hence, the applicants have filed this Civil Revision Application.

4) The plaintiffs i.e. non-applicant Nos.1 and 2 have filed the Civil Suit for partition mentioning the properties mentioned in civil suit as ancestral properties. It is the contention of the applicants that in the said Civil Suit, the plaintiffs are claiming in some of the properties, 1/3rd share and in the property at Sr.Nos. vi,vii,viii and ix, the plaintiffs are claiming 1/5th share.

5) It is the submission of the applicants that the suit is barred by law. The property mentioned under Sr.No.6 is already given to the applicant No.1 by registered gift deed dated 23/01/2001. The said gift deed was in the knowledge of the original plaintiffs and they have never challenged it. The defendant No.1 had disclosed the said gift deed in the proceedings

filed by the original plaintiffs in Appeal No.NAP 34/2007/2017 filed on 16.03.2017 before Collector, Yavatmal for review of the sanction granted to the layout prepared by the defendant No.1 in respect of survey No. 52/2012. The said gift deed has attained the finality and it cannot be questioned now at this stage without challenging the same. The plaintiffs have deliberately not disclosed this fact and sought relief that the sale deed dated 17.04.2017 is not binding on them. The properties mentioned at Serial Nos. vii, viii and ix, are the fixed deposits and the amount in PPF account and shares. The said properties were given to the applicant No.1 by registered will deed dated 21.06.2012. Said will deed is not questioned by anybody or any of the plaintiffs. The applicants have stated that the plaintiffs have approached the Trial Court not with clean hands and suppressed the material documents from the Court while filing the suit for partition in respect of the properties, which are described. It is barred by law. Hence, prayed to set aside the order passed by the Trial Court on the application filed by the applicants.

6) The learned counsel appearing for the non-applicant Nos.1 and 2 has stated that the plaintiffs are the legal heirs of

Bhagwandasji Bajoriya. The father-in-law of plaintiff no.1 and grandfather of plaintiff No.2. The properties mentioned in the plaint are ancestral properties and the defendants are the legal heirs of Bhagwandasji Bajoriya. The plaintiffs have claimed their share in the ancestral properties. A number of properties are there and the plaintiffs are not considered as legal heirs of Bhagwandasji Bajoriya. After the death of the husband of plaintiff No.1 and father of plaintiff No.2, without including the plaintiffs as legal heirs, in proceeding for grant of legal heirs certificate the properties were alienated to 3rd person, therefore, the plaintiffs have filed this suit for partition and possession. There is no suppression of material facts in the said suit hence, the trial court has rightly rejected the application filed by the applicant.

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

8) On perusal of the plaint, it appears that the suit is filed for partition of ancestral properties against the legal heirs of one Bhagwandasji Bajoriya by plaintiffs, who are also the legal representatives of said person being wife and son of Bharat Bajoriya. The plaintiffs are not considered as legal heirs while

deleting the name of Bharat Bajoriya from MJC No.62 of 2008. The plaintiffs were not knowing about it. The applicants have relied on the judgment in the case of *Sopan Sukhdeo Sable and others .v/s. Assistant Charity Commissioner and others*, reported in, *(2004) 3 SCC 137* wherein it is held in para 12 as follows:

“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. (see T. Arivandandam vs. T. V. Satyapal)”

9) It is the contention of the applicants that the plaintiffs have suppressed the facts. They were knowing about the gift deed and will deed and earlier litigations are also not disclosed by the plaintiff.

10) The applicants further placed reliance on the judgment in the case of the *Church of Christ Charitable Trust and Educational Charitable Society .v/s. Ponniamman Educational Trust (Civil Appeal No. 4841 of 2012, decided on 03.07.2012)* wherein it is

held in para 7 as follows:-

“It is also useful to refer the judgment in T. Arivandandam v. T. V. Satyapal and Anr. MANU/SC/0034/1977 : (1977) 4 SCC 467, wherein while considering the very same provision , i.e. order VII Rule 11 and the duty of the trial Court in considering such application, this Court has reminded the trial Judges with the following observation:

“5. The learned Munsif must remember that if on a meaningful – for formal – reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing clear right to sue, he should exercise his power under Order VII, Rule 11 of Code of Civil Procedure taking care to see that the ground mentioned therein is fulfilled and if clever drafting has created the illusion of a cause of action nip it in the bud at the first hearing by examining the party searchingly under Order X, Code of Civil Procedure. An Activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr.XI) and must be triggered against them...

It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or material (s) to sue, it is the duty of the trial Judge to exercise his power under Order VII Rule 11. If clever drafting has created the illusion of a cause of action as observed by Krishna Iyer J., in the above referred decision, it should be nipped in the bud at the first hearing by examining the parties under Order X of the Code.”

- 11) Keeping in mind the above said observations, I have

gone through the plaint. On perusal of the plaint, it appears that the plaintiffs have not suppressed the litigations between the plaintiffs and defendants. Whether the plaintiffs were aware about the gift deed and the will deed is the question of trial. After considering the evidence on record, it will be considered whether there is any suppression of material fact. At this stage, only on the submission made by the applicants that the plaintiffs were having knowledge of said gift deed and will deed and they have no any share in the said properties cannot be considered. The suit is for partition there is no any suppression of material fact. Hence, the interference at the hands of this Court is not required.

- 12) The Civil Revision Application is rejected.
- 13) Rule stands discharged.
- 14) Civil Revision Application stands disposed of.

(MRS.VRUSHALI V. JOSHI, J)