



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

944 CRA NO. 116 OF 2024

DEOCHAND SHIVLAL DEDWAL AND ANOTHER
VERSUS
BABASAHEB ASARAM KANAKE AND OTHERS

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Advocate for the Petitioner : Mr. Latange Vijay Prabhakar Rao

Advocate for Respondent No. 1 : Mr. Dhananjay A. Naik

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CORAM : SHAILESH P. BRAHME, J.

DATE : 06.01.2026

PER COURT :

Heard both sides.

2. This revision is directed against order dated 12.04.2024 passed below Exh. 65 preferred by defendant nos. 11 and 12 seeking rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure.

3. Respondent no. 1 has filed Regular Civil Suit No. 1123/2014 for declaration, perpetual injunction, mandatory injunction and cancellation of sale-deed dated 16.01.1981. The plaintiff claims to be the owner of land Gat No. 105 to the extent of 10 Acres. It is his case that the defendants have created the record showing their names and they are likely to take benefit of the same. It is further contended that defendant no. 11 and 12 are not concerned with the suit land but still their names are mutated in the revenue record, which are sought to be deleted.

4. Respondent no. 1 amended the plaint and incorporated additional pleadings as well as prayers. By way of amended pleadings and prayers, sale-deed dated 16.01.1981 executed by plaintiff's mother in favour of Narsing is sought to be cancelled on the ground that it was not executed by

plaintiff and he was not aware of the sale-deed. It is further stated that at the relevant time he was major and there was no occasion for his mother to execute the sale-deed on his behalf.

5. The suit is contested by the defendants including present applicants. They preferred application Exh. 65 under Order VII Rule 11 of the Code of Civil Procedure on the ground that no cause of action is made out from the plaint and it is hopelessly barred by limitation. By the impugned order, the application is rejected.

6. The learned counsel for the applicants submits that the learned Judge committed error of jurisdiction in holding that the limitation is mixed question of facts and law. It is submitted that the cause of action is illusory and the result of clever drafting. The plaintiff was aware of sale-deed of 16.01.1981. He did not challenge the same, though it was pressed into service before the revenue authorities. It is further submitted that the suit filed in the year 2014 is hopelessly barred by limitation and the plaint is liable to be rejected. It is further submitted that though the plaint is amended, by meaningful reading of the plaint, the cause of action has not been made out. It is further contended by the learned counsel Mr. Latange that other prayers in the plaint are consequential. To corroborate the submissions, reliance is placed on the judgments of **Raghwendra Sharan Singh Vs. Ram Prasanna Singh (dead) by L.Rs.; 2019 AIR (SC) 1430** and **Ravi Bhaskar Wattamrao Vs. Babanrao Narbaji More and others; in Civil Application No. 2430/2024, decided on 09.05.2025.**

7. Per contra, learned counsel for the respondents supports the impugned order. It is submitted that after 2017, when the matter was pending before the appellate authority on revenue side, the plaintiff learnt about the sale-deed dated 16.01.1981. It is further submitted that he was major and there was no question of executing sale-deed by his mother on his behalf. It is submitted that he is entitled to challenge the sale-deed. The

cause of action has been incorporated in paragraph nos. 16 and 17 of the plaint.

8. I have considered the rival submissions of the parties.

9. The cause of action has been incorporated in paragraph nos. 16 and 17 of the plaint. The plaint suffered amended and additional pleadings and prayers are incorporated. I have gone through amended paragraph nos. 9A and 9B as well as well amended prayers especially 'H'. It is settled law that for enquiry under Order VII Rule 11 of the CPC, the averments of the plaint and the documents produced along with the plaint are the relevant material. The entire focus of the learned counsel for the applicants is that the relief in respect of the sale-deed dated 16.01.1981 is barred on face of the record.

10. It reveals from record that parties are litigating on the revenue side also. In paragraph no. 9 of the plaint there is reference of ROR proceeding before the Sub Divisional Officer filed on 25.08.1982 and thereafter further reference occurs in paragraph no. 9A. It is contended that the plaintiff solicited correction of the revenue record and preferred appeal before the Sub Divisional Officer, which was disposed of on 08.09.2017. An appeal is stated to be carried by defendant no. 11 before the Additional Collector Aurangabad. It is not made clear as to exactly when the plaintiff learnt about the sale-deed dated 16.01.1981. It is only averred in paragraph No. 9B that when the proceedings are pending before the Additional Collector, Aurangabad, the defendants disclosed the sale-deed in question.

11. A registered sale-deed has been executed on 16.01.1981 by plaintiff's mother in favour of Narsing Dedwal. *Prima facie* it cannot be gathered that the plaintiff was not aware of the sale-deed in question. Considering the pleadings and the prayers of unamended plaint, it can be inferred that the prayer of declaration in respect of sale-deed was barred by limitation and instead of challenging the sale-deed, other reliefs are sought to overcome the legal impediment. It would be case of illusory cause of action by clever

drafting to the extent of relief of declaration regarding cancellation of the sale-deed.

12. This Court cannot be oblivious of the fact that there are multiple prayers made in the plaint. Those are in the form of declaration, perpetual injunction, mandatory injunction and cancellation of the sale-deed. Assuming for the time being that the applicants succeed for rejection of the plaint to the extent of declaration in respect of sale-deed dated 16.01.1981 for the reasons stated in the foregoing paragraphs, it is impermissible to reject the plaint partially. I am forfeited in my view by law laid down by the Supreme Court in the matter of **Central Bank of India Vs. Prabha Jain; 2025 INSC 95**.

13. I am being unable to be persuaded by counsel for the applicants that how other reliefs in the plaint are consequential. The cause of action is stated in paragraph no. 16 and 17. The meaningful reading of the plaint would disclose that the other prayers are entertainable and for that purpose a full fledged trial is required.

14. Learned counsel for the applicants has strenuously referred to the judgment of the Supreme Court in the matter of **Raghwendra Sharan Singh (supra)** to buttress the submission that the limitation cannot be in all cases mixed question of facts and law. My attention is adverted to paragraph no. 12 which *inter alia* refers to law laid down by the Supreme Court in **Madanuri Sri. Rama Chandra Murthy Vs. Syed Jalal; 2017 AIR (SC) 2653**. The facts are distinguishable in the case before the Supreme Court. Registered gift-deed executed by plaintiff along with his brother is sought to be challenged belatedly in the suit. It is recorded that for about 22 years neither plaintiff nor his brother though were confronted with the gift deed challenged it. In that context the Apex Court thought it fit to reject the plaint. The distinguishing feature of the present case is that even if the applicants succeed to the extent of rejection of plaint qua the relief of

declaration of cancellation of the sale-deed, partial rejection is not permissible in law. Hence, this judgment would not enure to the benefit of the applicants.

15. Further reliance is sought on the judgment of coordinate bench in the matter of **Ravi Bhaskar Wattamwar (supra)**. In that case the sale-deeds were executed in 1972 and 1975. The plaintiff failed to challenge the sale-deed within stipulated period after attaining majority. In that case the issue of partial rejection of the plaint was not germane. The facts of the case are also distinguishable. Hence, the judgment will not apply to the present case.

16. For the reasons stated above, I find that there is no perversity or illegality in the findings recorded by the trial Court.

17. The Civil Revision Application is rejected.

(**SHAILESH P. BRAHME, J.**)

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