



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 153 OF 2024

Sopan Nivrutti Vighe .. Applicant

Versus

Ishwar Nivrutti Vighe and others .. Respondents

Shri Amol S. Gandhi, Advocate for the Applicant.

**CORAM : SHAILESH P. BRAHME, J.
DATE : 08TH JANUARY, 2026.**

FINAL ORDER :

. Heard learned counsel Mr. Gandhi for the applicants.

2. Present civil revision application is directed against order dated 04.11.2023 passed below Exhibit 14 in R.C.S. No. 41 of 2023, rejecting application preferred under Order VII Rule 11 of the Code of Civil Procedure (for the sake of brevity and convenience hereinafter referred as to the "C.P.C.").

3. The respondent No. 1 has filed R.C.S. No. 41 of 2023 for following reliefs :

अ) वादींचा दावा मंजूर करण्यात यावा.

ब) वादी व प्रतिवादी यांची मयत आई हिचे हिश्यास आलेल्या मिळकतीचे वारसा हक्काने वादी प्रतिवादी यांचे दरम्यान वाटप होवुन

मिळावे.

- क) दिनांक २१.०२.२०१८ रोजी प्रतिवादी नं १, ३ व ४ यांनी वादी प्रतिवादी यांची आई मयत मुक्ताबाई यांचेकडून करून घेतलेले बक्षीसपत्राचा दस्त नं. ६१०/२०१८ हा बोगस व बेकायदेशीर असून तो वादींवर बंधनकारक नाही, तो दस्त रद्द होवुन मिळावा व तसा जाहीर ठराव होवुन मिळावा.
- ड) दावा मिळकतीचे रे. मु. नं. २२०/२००७ चे अंमलबजावणी झाल्याशिवाय (फायनल हुकूमनामा) व मिळकतीचे प्रत्यक्षात चर्तुसिमा व कब्जा निश्चित होईपावेतो व तसेच वादीचे संमतीविना कोणत्याही प्रकारे हस्तांतर प्रतिवादी नं १ व २ यांनी करू नये असा निरंतरचा ताकीद मनाई हुकूम प्रतिवादी नं १ व २ यांचेविरुद्ध मिळावा.
- इ) वेळप्रसंगी दाव्यात दुरुस्ती करण्याची परवानगी असावी.
- ई) इतर योग्य ते न्यायाचे हुकूम वादी यांचे लाभात व्हावेत.

4. Previously R.C.S. No. 220 of 2007 was filed by the respondent No. 1 for partition in respect of land gut No. 150/1 against applicant and the siblings. A compromise decree was passed on 14.01.2018. The parties were allotted shares. Muktabai – mother and sisters Satyabhamabai and Kamalbai were together allotted 63R of land. Thereafter on 21.02.2018, Muktabai and other sisters executed registered gift deed in favour of the applicant in respect of the share which they received in partition. In the above backdrop, applicant

submitted application Exhibit 14 U/O VII Rule 11 of the C. P. C. on the ground that the cause of action is illusory and suit is hopelessly barred by limitation. By the impugned order application Exhibit 14 came to be rejected.

5. Learned counsel for the applicant submits that gift deed was executed on 21.02.2018 by mother and the sisters of the applicant in his favour for which the respondent No. 1 – plaintiff was not concerned. He was aware of the same. There was no question of issuing any notice for effecting any mutation entry. It is contended that the cause of action particularly, the mutation and the knowledge stated in para Nos. 3 and 5 is illusory and articulated by cleaver drafting to overcome the impediment of limitation. It is further submitted that the claim for partition is totally untenable. The respondent No. 1 has taken inconsistent pleas regarding decree of partition passed in previous limitation. It is further submitted that a vexatious suit has been filed, which needs to be nipped in the bud. Reliance is placed on the judgment of the Supreme Court in the matter of Shri Mukund Bhavan Trust and others Vs. Shrimant Chhatrapati udayan Raje Pratapsinh Maharaj Bhonsle and another reported in *2025(1) AIR Bom R 597*.

6. The respondent No. 1 - plaintiff has filed suit for the relief of partition to the extent of share of deceased mother and declaration that gift deed dated 21.02.2018 is bad in law and not binding on the plaintiff. The averments of the plaint and the documents annexed with it are the relevant material, which can

be gone into for an inquiry U/O VII Rule 11 of the C. P. C. The applicant has filed written statement and raised defence in respect of maintainability of the suit in the wake of a compromise decree passed in R.C.S. No. 220 of 2007, limitation and other pleas. At this juncture, the defence raised in the written statement cannot be taken into account.

7. It is trite law that for an inquiry U/O VII Rule 11 of the C. P. C. a meaningful reading of the plaint is relevant consideration. It has been stated in para No. 3 of the plaint that though a decree was passed in R.C.S. No. 220 of 2007, it has not been executed and no partition has been effected by metes and bounds for certain reasons. It is further stated that the gift deed in question is bad in law for the reason that the physical possession was not handed over to the donor. It is further averred that the plaintiff learnt about the gift deed after receiving notice from the revenue authorities for effecting mutation entry No. 3038.

8. The plaintiff is stated to have no knowledge about the gift deed. In para No. 5 of the plaint a specific cause of action is stated imputing knowledge on or about 31.01.2023. I am of the considered view that the plaint cannot be rejected on the ground of limitation and full fledged trial is required to examine the issue of limitation. I have already taken a view **in the matter of M/s Sandeep Construction and Developer, through its Partners Sandip Ambadas Shinde and others Vs. Ashish**

**Balasaheb Thote and others in Civil Revision Application
No. 173 of 2024.** The relevant portion is as follows :

“25. The survey of the decisions referred above reveals the following principles :

- (i) Limitation to challenge registered instrument would ordinarily start running from date on which the instrument was registered.
- (ii) If the suit challenging the registered instrument is filed beyond three years from the date of registration that would not *ipso facto* lead to conclusion to reject the plaint being barred by time. In that case date of knowledge of the registered instrument is relevant one.
- (iii) The claim of the plaintiffs with regard to the knowledge of the essential facts giving rise to the cause of action as pleaded will have to be accepted as correct. At the stage of consideration of the application under Order 7 Rule 11 the stand of the defendants in the written statement would be altogether irrelevant.
- (iv) If the plaintiff has pleaded date of knowledge attempts made to redress the grievance before rushing to Courts, the issue of limitation becomes mixed question of law and facts which cannot be adjudicated at the threshold stage U/O VII Rule 11 of the C. P. C.”

9. The submissions of learned counsel Mr. Gandhi that the respondent No. 1 was aware of the gift deed or he was not required to be issued with notice are by way of the defence, which cannot be taken into account at this juncture. Further submission that whether inconsistent pleas in respect of partition has been taken by the plaintiff and the relief of partition is not permissible to be granted, can be looked into at

the time of trial.

10. I have not been shown any of the provisions of law which disclose that relief in respect of partition is impermissible to be granted. Even if the arguments of learned counsel in respect of limitation are accepted, the partial rejection of plaint is not permissible in view of the law laid down by the Supreme Court in the matter of Central Bank of India Vs. Prabha Jain reported in *2025 INSC 95*.

11. Learned counsel has relied on the judgment of the Supreme Court in the matter of Shri Mukund Bhavan Trust and others Vs. Shrimant Chhatrapati udayan Raje Pratapsinh Maharaj Bhonsle and another (supra). In that case suit was filed for various reliefs including declaration, injunction and possession. My attention is adverted to para No. 26 of the judgment. The ratio laid down therein cannot be made applicable to the present case. The facts are distinguishable. In the case at hand plaintiff has specifically pleaded that he was not aware of the gift deed and he learnt about it for the first time on 31.01.2023. The judgment would not enure to the benefit of the applicant.

12. I do not find any perversity or patent illegality in rejecting the application Exhibit 14. The civil revision application is rejected.

[SHAILESH P. BRAHME J.]

bsb/Jan. 26