



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 243 OF 2025

SHASHIKANT NAGNATH KERALE AND ANOTHER

VERSUS

UMAKANT NAGNATH KERALE AND OTHERS

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Advocate for the Applicants : Ms. Anjali Dube.

Advocate for Respondent Nos.1, 2, 4 & 5 : Mr. Sushant V. Dixit.

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CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 23.03.2026

PRONOUNCED ON : 27.03.2026

FINAL ORDER :

1. Taken up for final disposal with consent of the parties.
2. Civil revision application is directed against order dated 13.08.2025 passed below Exh.20 refusing to reject the plaint of Special Civil Suit No.68 of 2025. Applicants are original defendants and respondents are original plaintiffs. They are referred to as per their original status in the Trial Court.
3. The relationship between the parties is undisputed. Plaintiff No.1 Umakant, plaintiff Nos.3 to 6 and defendant No.1 are the siblings and children of Nagnathappa and

Parvatibai. Nagnathappa had filed Regular Civil Suit No.1132 of 1986 for injunction against present plaintiff No.1, defendant No.1 and his wife Parvatibai in respect of Municipal House No.174, 175 of CTS.No.9483 and Municipal House No.25 situated at Latur. The sketch of the properties was produced along with the plaint. They had arrived at settlement in view of partition effected on 13.11.1985. They were shown to be in possession of those suit properties as per their shares. The suit was disposed of in terms of the settlement vide order dated 07.10.1986.

4. Plaintiffs have filed Special Civil Suit No.68 of 2025 for partition, separate possession, rendition of accounts in respect of house properties, agricultural lands, lease hold plots, movable properties including the business of the family as enumerated in paragraph No.1 of the plaint. Defendants submitted application Exh.20 under Order VII Rule 11 for rejection of the plaint on the ground of want of cause of action, illusory cause of action and omission to claim relief. It is contested by the plaintiffs. It is rejected by the impugned order.

5. Learned counsel appearing Ms. Anjali Dube for applicants submits that without seeking any challenge to the decree dated 07.10.1986, suit is not maintainable. The cause of action shown is illusory which is outcome of clever drafting. Any challenge to decree passed in earlier round of litigation is clearly barred by time and to overcome the impediment again relief of partition is solicited. It is submitted that once there is separation by decree of Civil Court, it is impermissible to agitate the same relief through the sisters and adding subsequently acquired properties. It is submitted that no right to sue exists to the plaintiffs. The sisters are not entitled to claim partition. Already there was separation by metes and bounds in 1985 and decree passed on 07.10.1986. The such suit is not maintainable.

6. The submissions are repelled by learned counsel Mr. Dixit. He would submit that the subject matter, parties and claim as such are different. In earlier round of litigation, all facts were not brought before the Court and dodging the rights of the daughters the suit was compromised. It is vehemently submitted that the decree passed on 07.10.1986 is not binding

on plaintiff Nos.3 to 6. It was not a suit for partition. There was no separation by metes and bounds. All properties were not brought in common hotchpot. The joint family business continued and the properties acquired through the business are subjected to the relief in the present suit. It is further submitted that prayers in the present suit are independent especially the relief of rendition of account. It is contended that the purport of the decree dated 07.10.1986 was to secure possession from the tenant and not to have partition.

7. Having considered rival submissions of the parties, it is noticed that earlier suit was filed by Nagnathappa against his two sons and wife. It was in respect of house properties at CTS.No.9483 and Municipal House No.25 in ward No.21. The daughters of Nagnathappa were not impleaded. Relying upon the partition of the properties effected on 13.11.1985 the consent decree was passed identifying and demarcating the shares of the parties as per the sketch. The decree dated 07.10.1986 was not subjected to challenge by the parties at any point of time.

8. Present suit is filed by children of Nagnathappa on one side including the daughters and his another son Shashikant and his wife on another side for partition, possession, rendition of accounts and consequential benefits. It is pertinent to notice that plaintiff No.1 Umakant and defendant No.1 Shashikant were parties in the earlier suit. The suit property described in paragraph No.1-A was subject matter in earlier suit. The rest of the suit properties are stated to have been acquired subsequently and/or out of joint family business.

9. The plaint expressly refers to the consent decree passed in Regular Civil Suit No.1132 of 1986. The purport of the decree is stated to be to secure possession of the shops from the tenants. It is further stated that the decree was nominal and was not intended to be acted upon. The meaningful reading of the plaint especially paragraph Nos.5 to 7 shows that it was an articulated attempt for eviction of the tenants. Further paragraph shows that joint family business, immovable properties and movables were not subjected to the partition, earlier.

10. The consent decree passed on 07.10.1986 still subsists. No prayer is solicited to challenge the decree but the tenor of the plaint and prayers is to averred decree. If the daughters of Nagnathappa wanted to claim share then they should have challenge the consent decree in expressed terms. To circumvent hurdle of limitation specific challenge has not been raised. The cause of action appears to be illusory and outcome of clever drafting.

11. Earlier suit was for injunction but the consent decree of partition and separation of shares was passed. This type of course is permissible as per Order 23 Rule 3 of CPC. It cannot be said that the consent decree would be void and not binding on the plaintiffs. For that purpose also, a specific challenge has to be raised to the consent decree which is absent.

12. The joint family business was not subjected to partition in earlier round of litigation. The movable and immovable properties are stated to have been acquired from its nucleus. The rejection of the plaint is not solicited qua the particular properties but it is on the ground that their exists no right to

sue. Therefore, the observations regarding partial rejection of plaint are unsustainable.

13. The plaint and the consent decree passed on earlier occasion show that adding of the properties and the parties in the present suit is camouflaged by devious and clever drafting to overcome law of limitation as well as Order 23 Rule 3-A. It is the submission of learned counsel Mr. Dixit that while obtaining earlier decree, material facts were suppressed and dodging the claim of sisters the consent decree was obtained. If that is so then those are the more reasons for the plaintiff to challenge the consent decree which is omitted cleverly. I find substance in the submissions of learned counsel for the applicants. The plaint is liable to be rejected.

14. Learned counsel Ms. Anjali Dube seeks to rely on the judgment of *Ramisetty Venkatanna and another Vs. Nasyam Jamal Saheb and others ; 2023 SCC OnLine SC 521*. In that case also plaintiffs had cleverly avoided to claim any relief of partition deed executed in the year 1953. In pursuance to the partition deed, parties were separated by metes and bounds. To bring the suit within limitation, necessary reliefs were not

solicited. In present case also without seeking any relief in respect of consent decree which is time barred, present suit is filed. I find that present civil revision application deserves to be allowed. I, therefore, pass following order :

ORDER

- (i) Civil revision application is allowed.
- (ii) Impugned order is quashed and set aside.
- (iii) Plaint in Special Civil Suit No.68 of 2025 shall stand rejected.
- (iv) Decree be drawn accordingly.
- (v) There shall be no order as to cost.

(SHAILESH P. BRAHME, J.)

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vmk/-

15. After pronouncement of judgment, learned counsel for the respondents prays for stay to the operation and execution of the judgment. He is unable to state the stage of the suit.

The suit is of the year 2025. The plaint can be rejected at any stage of the suit. Request for stay is rejected.

(SHAILESH P. BRAHME, J.)

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