



IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO.1148 OF 2024(F)

- 1) Mr. Arjun Anthony Da Costa
Aged 62 years,
Son of late Gaudencio Gervasio Da Costa,
Widower, businessman
Indian National,
Resident of H. No. 173, Maria Cottage,
Nachinola, Bardez, Goa.
- 2) Mrs. Nitashya Maria Gasper,
Aged 44 years,
daughter of Arjun Anthony Da Costa,
Indian national,
- 3) Mr. Roy Antonio Gasper,
Aged 48 years, son of Mr. Eurico Gasper,
Indian National, Both residents of 201,
Gasper Apartments, Fontainhas,
Near People's High School, Mala, Panaji,
Goa.
- 4) Mr. Russel D'Costa,
Aged 42 years,
Son of Mr. Arjun Anthony Da Costa,
Indian National,
Resident of H. No.173, Maria Cottage,
Nachinola, Bardez, Goa.
- 5) Mr. Sunil Anthony Da Costa,
Aged 55 years,

Son of late Gaudencio Gervasio Da Costa,
Indian National,
Resident of Cherozie, Zoida Wado,
Nachinola, Bardez, Goa.

6) Mr. Christopher Anthony D'Costa,
Aged 37 years,
Son of Mr. Sunil Anthony Da Costa,
Indian National,

7) Mr. Craig D'Costa,
Aged 30 years,
Son of Mr. Sunil Anthony Da Costa,
Indian National,

Both residents of H. No.76, Cherozie,
Zoida Wado, Nachinola, Bardez, Goa.

Petitioner nos. 2 to 7 are represented
Herein by their duly constituted
Power of Attorney Holder,
Mr. Arjun Anthony Da Costa,
Petitioner no. 1 herein

... Petitioners

Versus

- 1) Mr. Appa Balkrishna Rao (Since deceased
through LR's)
Age 72 yrs
- 2) Mrs. Veerappa Rao (since deceased through
LR's)
 - a) Mr. Avinash Appa Rao
Son of Mr. Appa Balkrishna Rao,

married,

b) Mrs. Urmilla Avinash Rao,
aged 38 years.

Wife of Avinash Appa Rao,
married, housewife,

c) Mr. Atish Appa Rao,
aged 39 years, son of Mr. Appa Balkrishna
Rao,
married, Service,

d) Mrs. Sunita Alish Rao,
aged 34 years,
Wife of Atish Rao,
Married, housewife,

e) Mr. Sunil Appa Rao,
aged 37 years,
Son of Appa Rao,
Married, Service,

f) Mrs. Vijayalaximi Sunil Rao,
aged 33 years,
Wife of Sunil Appa Rao,
married,

g) Mr. Mayur Appa Rao,
aged 33 years,
Son of Mr. Appa Rao,
single, Service,

h) Vanita Appa Rao
alias Vanita Devendra Bhanushali, aged 31

years, daughter of Appa Rao, wife of
Devendra Bhanushali,
married, Housewife,

i) Mr. Devendra Bhanushali,
aged 28 years, Son of Kishore Bhanushali,
married, Service,

j) Mrs. Ashwini Appa Rao,
alias Ashwini Swapnil Dhere, aged 26 years,
daughter of Appa Rao, married, housewife,

k) Mr. Swapnil Dhere,
aged 37 years,
Son of Dilip Dhere,
married, Service,
All Indian Nationals,

All residents of Room No.2,
Avinash House, Datta Mandir, Sainath Nagar,
Custom Road, Upper Trombay, Mumbai-
400088.

... Respondents

Mr. Nikhil Dhumatkar, Advocate for the Petitioner.

Mr. S.B. Ghadge, Advocate for the Respondents

CORAM:	VALMIKI MENEZES, J.
Reserved on :	4th DECEMBER, 2025
Pronounced on :	5th JANUARY, 2026

ORDER:

1. Registry to waive office objections and register the matter.

2. Heard learned Counsel for the parties.

3. This Application impugns the order dated 14.03.2024, passed by the Civil Judge Junior Division 'D' Court, Mapusa Goa, in Regular Civil Suit No.174/2022/D, whilst dismissing the application filed under Order 7 Rule 11 read with 151 CPC by the Applicant/ Original Defendants therein. The main ground raised, seeking rejection of the plaint was that the suit was barred by law of limitation, that it was undervalued and that the Plaint does not disclose a cause of action; the Plaintiffs filed their reply to the said application on 25.04.2023 opposing the application.

Vide impugned order dated 14.03.2024 the Civil Court dismissed the application holding that limitation is a mixed question of fact and of law which required to be decided on merits.

4. The main contentions raised by learned advocate Nikhil Dhumatkar, for the Petitioner are the following:

- a. It was submitted that on the meaningful reading of the plaint, the cause of action, if at all it arose in favour of the Original Plaintiff, would relate back to the year 2014 or 2015 when the Plaintiff and his late wife Veena put in appearance in Inventory Proceedings No.25/2015/C, and in which their relinquishment of the right to succession /inheritance to the estate of late Gaudencio has been recorded. The Learned advocate has taken me through the plaint and more specifically the averments in

paragraph 3 to 5 and paragraph 7 thereof which make reference to the Deed of relinquishment dated 16.12.2014 and a Power of Attorney dated 08.01.2014, making it clear that the Plaintiff had knowledge of these documents on appearing in the Inventory Proceedings in the year 2015. He further submits that there is no challenge thrown in the plaint to the Power of Attorney, dated 08.01.2014 on the basis of which the deed of relinquishment dated 16.12.2014 was executed. He further submits that the cause of action, as pleaded in the plaint, that the Plaintiffs No.1 and 2 had never freely consented to convey their authority to any person to relinquish their right to the estate, is relatable to the Power of Attorney dated 08.01.2014, and therefore the cause of action had obviously not arisen in December 2021 but arose in 2015 itself, accordingly the suit was barred by limitation, since it was filed to challenge the deed of relinquishment dated 2014 only in the year 2022.

5. Learned advocate Mr S. B Ghadge on behalf of the Respondents /Original Plaintiffs has advanced the following submissions:

- a. It was submitted that the impugned order does not call for interference, since the plaint, at paragraph 19 pleads that the cause of action first arose in December 2021, when the Plaintiffs first got confirmed knowledge that the suit documents were fraudulent and executed by Defendant No.1, by his sick wife before a notary on 16.12.2014; it was further contended

that the deed of relinquishment dated 16.12.2014 was executed on the basis of a Power of Attorney dated 08.01.2014, which came to their knowledge only in December 2021.

- b. It was submitted that the plaint must be read as a whole, in this case if read as a whole, the Court would not be able to conclude without evidence, that the suit was barred by limitation. Reliance has been placed on the following judgements.

i. Sri Biswanath Banik and Anr V/S Sulanga Bose reported in 2022 (7) SCC 731

ii. Babasaheb Ramdas Shirole and Ors V/S Rohit Enterprises and Ors, in its order dated 17.11.2025 in SLP No.16809 of 2025

iii. G. Nagaraj and Anr v. B.P. Mruthunjayanna and Ors reported in 2023 SCC OnLine SC 1270

iv. Parveen Bala v. Bhimsen Mehta, reported in 2024 SCC OnLine Del 1898

6. The question that falls for determination therefore, is whether on a reading of the plaint as a whole, it can be concluded from the facts stated therein that the suit is ex-facie barred by limitation and the plaint requires to be rejected.

7. It is the case of the Plaintiffs that Plaintiff No.1 and 2 received notices in Inventory Proceedings No.25/2015/C on the file of the Civil Judge Senior Division 'C' court at Mapusa, initiated by the mother of Plaintiff No.2(Vilian), pursuant to which they put in appearance on 26.08.2015; It is

further their case that on inspection of the court file it was realised that the Original Defendant No.1, brother of Plaintiff No.2(Arjun) had purchased the share of the mother(Vilian), through auction in the proceeding , and had also acquired the share of the deceased father(Gaudencio) based on a Deed of Relinquishment of rights dated 16.12.2014; it was further averred in the plaint that the deed of relinquishment was executed by the Plaintiffs through General Power of Attorney dated 08.01.2014. It was pleaded that the property came to be allotted vide decree dated 05.05.2022 passed in the Inventory proceedings. These pleadings are found in paragraphs 7 to 9 of the plaint.

8. The Plaintiffs, by the suit which was filed on 27.07.2022 challenged the Deed of Relinquishment of rights dated 16.12.2014 but though they refer to the General Power of Attorney dated 08.01.2014 as one of the suit documents claimed to be executed fraudulently, do not seek a relief to declare this Power of Attorney to be void in Regular Civil Suit No.174/2022/D.

9. From a reading of the plaint as a whole, the following facts emerge:

- a. A power of Attorney dated 08.01.2014, was admittedly executed by Veena, her husband Appa (Plaintiffs No.1), Sunil (Defendant No.3) and his wife Sheryl (Defendant No.4) in favour of Patricia on the basis of which a Deed of Relinquishment came to be executed on 16.12.2014, in which the Plaintiff No.1 and his wife Veena, Defendant no.3 and his

wife Sheryl, relinquished their rights to inheritance in the undivided estate of their late father Gaudencio. Consequently the entire estate of the Gaudencio (half share) stood equally inherited by his wife Vilian and by his son Defendant No.1 Arjun.

- b. Inventory Proceedings No.25/2015/C was instituted on 17.01.2015 , on the death of late Gaudencio, by his wife Vilian; in the application to initiate the Inventory, Vilian has made reference to the Deed of Relinquishment dated 16.12.2014. Vilian has administered oath and gave a statement to the inventory court on 24.02.2015. In her statement she has named all the heirs and further stated that Veena, her husband Appa (Plaintiffs No.1), Sunil(Defendant No.3) and his wife Sheryl (Defendant No.4) had relinquished their rights to the inheritance of the estate of Gaudencio vide Deed of 16.12.2014, registered at pages 18(v) to 19(v) in the book of deeds of Relinquishment bearing No.848 before the sub-Registrar of Bardez at Mapusa . She also filed on 24.02.2015, a list of assets of the estate, the only asset being residential house bearing no.185 on land under survey no.7/12 of Village Nachinola, which was valued at Rs.20,00,000/-.
- c. The three children, Veena (late wife of Plaintiff No.1), Arjun (Defendant No.1/ Petitioner) and Defendant No.3/Petitioner

No.5 (Sunil), being his children along with their spouses, Plaintiff No.1, Defendant No.2 and Defendant No.4 were all notified of the Inventory proceedings. In the Inventory proceedings all the aforementioned parties including the Plaintiff No.1 and 2 were represented by a common advocate and by their duly constituted attorney Patricia (Defendant No.2), in whose favour they had executed Power of Attorney dated 08.01.2014.

- d. An Application for conducting an auction was filed on 08.07.2015 by the Head of Family, which was allowed fixing the auction on 13.08.2015 at 11.30 am. Auction was conducted in the presence the Head of the Family, Attorney holder of the Plaintiff No.1 and 2 and Defendant No.3 and 4 and the Advocate for all the interested parties, including the Plaintiffs. The only asset, the residential house was taken on auction by Arjun, Defendant No.1 for Rs.20,00500/- and thereafter minutes for the auction were drawn and counter signed by the Judge, Attorney for all the parties and the advocate.
- e. In the Plaint, at Paragraph 4 to 9 it is stated that after Plaintiff No.1 (Appa) and 2 (Veena) received notices in Inventory Proceedings, they appeared on 26.08.2015 and on inspection realised that the Original Defendant No.1, brother of Plaintiff

No.2 (Arjun) had purchased the share of the mother (Vilian), through auction in the proceedings, and had also acquired the share of the deceased father Gaudencio based on a Deed of Relinquishment of rights dated 16.12.2014. It is also pleaded in these paragraphs that on inspection of the Court file they realised that the auction was conducted before they could make an appearance; on inspection of the file they further realised that fraud was played on them by Defendant No.1 on the basis of the Deed of Relinquishment and the Power of Attorney dated 08.01.2014. They also realised that the Power of Attorney had been executed by them before a notary and the auction and allotment was carried out on the basis of copies of the deed of relinquishment and the said power of attorney. They also allege that they had never consented to convey, through any power of Attorney, to anyone or to relinquish or surrender their rights in the estate, and the auction carried out was by misusing these documents, which they allege are fraudulent.

It may be noted that all these averments clearly establish the knowledge of the Deed of Relinquishment and its contents and of the Power of Attorney dated 08.01.2014 (which is not challenged) and the fact that it was used to complete the auction and to execute the Deed of Relinquishment, as on 26.08.2015. Thus the allegation of fraud and knowledge of the document challenged has been pleaded as of 26.08.2015, when the Plaintiff No.1 and his wife Veena could have very well

challenged these documents at that time itself before the Inventory proceeding was completed.

- f. Vilian, who was appointed as Head of the Family passed away on 20.12.2015. The Defendant No.1, Arjun was then appointed as Head of the Family by the Inventory court and gave his statement on oath on 30.03.2022. The Chart of Partition in the Inventory proceeding and the final order disposing off the same and allotting the only asset to the Defendant No.1 was passed on 05.05.2022. In the plaint, Plaintiff No.1 does not make any statement as to why, having knowledge of the document, which he has challenged in the suit, way back in the year 2015, he chose only to file the suit in the year 2022. From the pleadings in the plaint, it is stated that Veena, wife of Plaintiff No.1, expired on 08.02.2017, while the wife of Defendant No.1 Patricia; expired on 05.01.2022. Strangely, the suit was filed in the name of the Plaintiff No.2 Veena, even though she had expired way back on 08.02.2017. It appears that the Plaintiff No.1 has filed this suit after the demise of his own wife and the demise of Patricia i.e, wife of defendant No.1, who was their attorney in the inventory and after the death of Vilian (His mother in law) who passed away on 20.12.2015.

g. The defendant No.1 in his statement on oath has placed before the Inventory court the fact of the demise of Veena, Vilian and Patricia and the names of their heirs before disposing of the inventory proceeding. Apart from all the aforementioned facts being pleaded in the plaint, the plaint relies upon the certified copy of the entire record of the Inventory proceedings with the deed of relinquishment and power of attorney which are part of the record and annexed to the plaint.

10. Considering the aforementioned facts, from the pleadings in the plaint itself therefore, the contents of the deed of relinquishment which is challenged were fully within the knowledge of the Plaintiff No.1 and his late wife Veena 26.08.2015; the plaint avers that these documents are fraudulent and the auction conducted in the year 2015 itself was an act of fraud. The inventory proceeding was pending as on 26.08.2015, and having this knowledge, obviously, Plaintiff No.1 and Veena could have challenged these documents and the auction in that very inventory proceedings as it was then pending. The plaintiff No.1 instead, chose to file the suit 7 years later, much beyond the period of limitation, which in this case commences on the date of his knowledge i.e on 26.08.2015 and that to after the all the relevant parties i.e Veena,(his wife), Vilian (his mother in law) and Patricia(his Attorney) have all passed away, all of whom were alive as on 26.08.2015. The suit was therefore barred by limitation as the cause of action to challenge the deed of relinquishment, by the averments made in the plaint had arisen on

26.08.2015, when plaintiff No.1 and Veena gained full knowledge of the alleged Fraud.

11. The trial court instead of reading the plaint as a whole and reading the appended certified copy of the Inventory proceeding has in a cryptic order dismissed the application for rejection of plaint, stating that cause of action pleaded in the plaint, in paragraph 19, claims that the same arose in December 2021. It has not examined the plaint nor the specific pleadings and the appended inventory proceeding, to find out the date of knowledge attributable to the Plaintiff no.1. There is a clear case of non application of mind to the facts pleaded in the plaint and consequently the impugned order must be quashed and set aside.

12. Consequently, the impugned order dated 14.03.2024 is quashed and set aside and the plaint in Regular Civil Suit No. 174/2022/D before the Civil Judge Senior Division at Mapusa is rejected. For the reasons stated above, the application under Order 7 Rule 11 CPC dated 16.02.2023 at Exhibit D-17 is allowed; the plaint in Regular Civil Suit No. 174/2022/D stands rejected. The Revision Application is allowed in terms of prayer clause (b).

VALMIKI MENEZES, J.