

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3396 OF 2025**

Ramchandra Hemaji Pasthe ... Petitioner
versus
Anant Laxman Pashte and Ors. ... Respondents

Mr. Rajesh Kachare i/by Ms. Kashvi Ali, for Petitioner.
Mr. Aniruddha A. Garge with Mr. Kashyap Bhalerao i/by Ms. Manali Garge, for
Respondent Nos.1 to 6.

CORAM: N.J.JAMADAR, J.

DATE : 24 APRIL 2025

P.C.

1. Heard the learned Counsel for the parties.
2. This Petition is directed against an order dated 12 December 2024 passed by the learned Civil Judge, Jr. Dvn., Murbad, on an application for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908, preferred by the Petitioner in RCS No.6 of 2023 whereby the said application came to be rejected.
3. The Plaintiffs are the sons and daughters of Laxman Pashte, brother of the Petitioner – Defendant. Respondents instituted a suit for declaration that the purported Will dated 22 December 2007 executed by Laxman Pashte, their father, is false, forged and fabricated and is not binding on the Plaintiffs and that they are the owners of the suit property and the consequential relief of injunction.

4. The Petitioner preferred an application for rejection of the plaint on the premise that the plaint did not disclose cause of action as there was material suppression of fact, in as much as the Plaintiffs had sworn an affidavit before the Executive Magistrate on 4 October 2021 and admitted the execution and genuineness of the Will executed by their father in favour of the Defendant. Even otherwise, the relief in the plaint was barred by law of limitation.

5. The learned Civil Judge was of the view that the said fact of execution of the affidavit by the Plaintiffs before the Executive Magistrate was in the nature of the defence of the Defendant and could not have been looked into at the stage of consideration of the application for rejection of the plaint. The bar of limitation was also not required to be sustained as it is a mixed question of law and facts.

6. Mr. Kachare, the learned Counsel for the Petitioner submitted that a clear case of suppression of facts was made out. Had the said fact of swearing of the affidavit been mentioned in the plaint, certainly there would have been no cause of action to seek declaration qua the Will in favour of the Defendant. Instead, the Plaintiffs have resorted to the device of clever drafting and averred that a dispute was raised about the mutation of the name of the Defendant in the record of right of the suit land on the basis of the alleged Will.

7. Reliance was placed on the decision of the Supreme Court in the case

of Dahiben V/s. Arvindbhai Kalyanji Bhanushali and Ors.¹ to draw home the point that at the stage of consideration of an application for rejection of the plaint, the Court is required to take into account the aspect of suppression of facts which, if disclosed, could have indicated that there was no cause of action.

8. I have perused the averments in the plaint and the material on record. I am unable to persuade myself to agree with the submissions of Mr. Kachare. The question as to whether the Plaintiffs have affirmed an affidavit before the Executive Magistrate on 4 October 2021 is a matter rooted in facts. The Defendant asserts the execution of the said affidavit. The Plaintiffs have controverted the said fact. There are clear averments in the plaint disputing the execution and genuineness of the Will. In such a situation, it would be hazardous to draw an inference that the plaint does not disclose cause of action.

9. Incontrovertibly, the Plaintiffs are the children of Laxman Pashte, whether Laxman Pashte could have executed the Will disinheriting all his children and made a bequest in favour of his brother, is the moot question that would warrant adjudication in the suit.

10. In these circumstances, the learned Civil Judge was fully justified in rejecting the application for rejection of the plaint. No case is made out to

¹ (2020) 7 SCC 366

interfere with the impugned order in the supervisory jurisdiction.

11. The Writ Petition stands dismissed.

(N.J.JAMADAR, J.)