

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.262 OF 2025**

Ganesh Somnath Waghale and Ors. ... Applicants
versus
Anjana Raghunath Hargude and Ors. ... Respondents

Mr. Vivek V. Salunke, for Applicants.
Mr. Drupad S. Patil, for Respondents.

CORAM: N.J.JAMADAR, J.

DATE : 16 FEBRUARY 2026

ORDER :

1. Heard the learned Counsel for the parties.
2. This revision application is directed against the order dated 7 February 2025, whereby the application filed by Defendant Nos.5 and 12 – Applicant Nos.1 and 8 for the rejection of the plaint under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908, came to be rejected.
3. Respondent Nos.1, 2a and 2b have instituted a suit for declaration, partition, separate possession and perpetual injunction in respect of the suit properties, asserting that the suit properties are the ancestral properties and they have right, title and interest therein. The Plaintiff No.1 and predecessor-in-title of Plaintiff Nos.2a and 2b are the sisters. Defendant Nos.1 and 2 are their brothers. Late Raghunath was the father of Plaintiff No.1 and the predecessor-in-title of Plaintiff No.2 and Defendant Nos.1 and 2. There has

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not been partition and separate possession of the suit properties.

4. In the year 2023, when the Plaintiffs demanded their separate share, Defendant Nos.1 and 2 refuted the claim of the Plaintiffs. The Plaintiffs caused enquiries. It transpired that, on 15 June 1988, Defendant Nos.1 and 2 had illegally transferred the suit properties in favour of Defendant No.3. Defendant No.3 had, in turn, sold the suit properties under a registered Sale Deed dated 29 November 2001 in favour of Defendant No.4. There have been successive transferees of the suit properties. The Plaintiffs raised objection to the mutation of the names of the purchasers in the record of rights of the suit lands. Yet, during the pendency of the said proceedings, Defendant No.5 transferred the suit properties described in paragraph No.1B in favour of Defendant Nos.7 to 12 under a Sale Deed dated 18 April 2024. Hence, the suit.

5. Defendant Nos.5 and 12 filed an application for rejection of the plaint contending, inter alia, that there was no cause of action for the institution of the suit. Defendant Nos.1 and 3 and deceased Hirabai, mother of the Plaintiffs and Defendant Nos.1 and 2, had executed a Sale Deed in favour of Defendant No.3 on 15 June 1988. Thus, the suit was ex-facie barred by law of limitation.

6. By the impugned order, the learned Civil Judge was persuaded to reject the application observing, inter alia, that no case for rejection of the plaint

either under clause (a) or clause (d) of Rule 11 of Order VII of the Code, was made out.

7. Mr. Salunke, learned Counsel for the Applicants, would urge that the learned Civil Judge approached the matter from a wrong perspective. The grounds on which the applicants were seeking rejection of the plaint were not properly appreciated. Mr. Salunke would urge, the suit is ex-facie barred by limitation, and, therefore, the plaint ought to have been rejected under clause (d) of Order VII Rule 11 of the Code.

8. A two pronged submission was canvassed by Mr. Salunke. Firstly, the execution of the registered Sale Deed in the year 1988 by Defendant Nos.1 and 2 and Hirabai, constituted a notice to the public at large. Therefore, a cause of action for seeking declaration in respect of the said instrument and the underlying transaction can be said to have arisen on the date of the registration of the said instrument. To this end, Mr. Salunke placed a very strong reliance on a judgment of the Supreme Court in the case of **Uma Devi and Ors. V/s. Anand Kumar and Ors.**¹

9. Secondly, under Article 109 of the Limitation Act, 1963, the period of limitation for setting aside the alienation is 12 year from the date the alienee takes possession of the property. In the case at hand, since the Plaintiffs are seeking relief of injunction to restrain the Defendants from changing the

¹ (2025) 5 SCC 198

nature of the suit properties, it implies that the alienees have taken possession of the suit properties under registered Sale Deed dated 15 June 1988. Thus, the suit would be clearly barred by limitation.

10. Mr. Salunke would also submit that, since the property was alienated before 20th day of December 2004, the proviso to sub-section (1) of Section 6 of the Hindu Succession Act, comes into play and the provisions contained in main part of Section 6, are not attracted. Reliance was sought to be placed on a judgment of the learned Single Judge of this Court in the case of **Sarjerao Dhondiba Sarode and Ors. V/s. Kamal Kerubhau Pachange and Ors.**²

11. As against this, Mr. Patil, learned Counsel for the Plaintiffs, would submit that the period of limitation under Article 59 of the Limitation Act, does not begin to run from the date of the registration of the instrument affecting the property in respect of which a declaration is sought in all situations. While deciding the application for rejection of the plaint, the claim of the Plaintiff with regard to the knowledge of the essential facts giving raise to the cause of action as pleaded, is required to be accepted. Reliance was placed by Mr. Patil on the judgment of the Supreme Court in the case of **Daliben Vajjibhai and Ors. V/s. Prajapati Kodarbhai Kachrabhai and Anr.**³. Mr. Patil also banked upon the judgment of the Supreme Court in the case of **P.**

² 2018(5) Mh.L.J. 323

³ 2024 SCC Online SC 4105

Kumarakurubaran V/s. P. Narayanan and Ors.⁴.

12. The relationship between the parties does not seem to be in dispute. Nor the character of the properties appears to be debatable. It is the plain case of the Plaintiffs – daughters of the original holder of the suit properties, that the suit properties are the ancestral properties and there has not been a partition by meets and bounds. In the light of the averments in the plaint, which are only required to be considered while deciding the application for rejection of the plaint, the claim of the Plaintiffs that they are entitled to the share in the suit properties, prima facie, appears adequate to furnish a cause of action to institute a suit in vindication of their right as coparceners. Thus, the submission that there is no cause of action is required to be stated to be repelled.

13. The second limb of the submission, premised on the bar of limitation, also appears tenuous. Generally and in a vast majority of the cases, limitation is a mixed question of law and facts. Undoubtedly, in a case where the suit appears to be ex-facie barred by limitation, the Court would not hesitate in nipping such hopelessly time-barred suit in the bud. (**Shri Mukund Bhavan Trust and Ors. V/s. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and Anr.**⁵ and **Dahiben V/s. Arvindbhai Kalyanji Bhanusali and Ors.**)⁶

4 2025 SCC Online SC 975

5 2024 SCC Online SC 3844

6 (2020) 7 SCC 366

14. In the case at hand, the rejection of the plaint is sought on the ground that there was ouster of the Plaintiffs. The execution of the sale deed by Defendant Nos.1 and 2 and Hirabai, late mother of the Plaintiffs and Defendant Nos.1 and 2, is pressed into service to demonstrate the ouster. It is trite, in case of a joint family property, the principle of community of interest and unity of possession comes into play. Onus rests on the Defendant to establish ouster by cogent evidence as the mere fact that the sisters were kept out of the enjoyment and profits of the estate, is not sufficient to draw an inference of ouster. **(Darshan Singh and Ors. V/s. Gujjar Singh (dead) by LRs and Ors.)**⁷

15. From the perusal of the averments in the plaint, an inference that the Plaintiffs had knowledge of the sale deed dated 15 June 1988 executed by Defendant Nos.1 and 2 and late Hirabai in favour of Defendant No.3, at an earlier point of time cannot be readily drawn. Constructive notice is sought to be attributed on the basis of registration of the said instrument. In this context, reliance placed by Mr. Salunke on the judgment in the case of **Uma Devi and Ors. (supra)**, does not appear to be well founded as it was a case of previous partition. In that context, the Supreme Court held that the predecessors of the Plaintiffs had notice of the registered sale deeds (executed in 1978) flowing from the partition that took place wayback in 1968

⁷ (2002) 2 SCC 62

by virtue of there being registered document. The Supreme Court further observed that the Plaintiff failed to address the crucial question of when they became aware of the registered sale deeds.

16. The facts of the case at hand are quite distinct. In the plaint, there are categorical averments that the Plaintiffs caused enquiries in the year 2023 when Defendant Nos.1 and 2 denied their right, title and interest in the suit properties. There is nothing to indicate that the Plaintiffs had either actual or constructive notice of the sale deed dated 15 June 1988.

17. Reliance on the decision in the case of **Sarjerao Dhondiba Sarode and Ors. (supra)**, also appears inapposite, as in that case also, there was a prior decree in a previous suit in which an unequivocal declaration was made that the partition had been effected by meets and bounds in the year 1958 also and the said partition was also acted upon. In that context, the learned Single Judge held that the proviso to Section 6(1) of the Hindu Succession Act was attracted in the facts of the said case.

18. The submission of Mr. Salunke premised on Article 109 of the Limitation Act, also does not merit acceptance as the suit is primarily for the declaration of the shares of the Plaintiffs in the suit properties and partition thereof. In the case of **P. Kumarakurubaran (supra)**, on which reliance was placed by Mr. Patil, the Supreme Court enunciated that the emphasis under Article 59 is not on the date of the transaction per se, but on the accrual of the case of action,

which in cases involving allegations of fraud or unauthorized execution of documents, hinges upon the date on which the Plaintiff acquired knowledge of such facts.

19. In the aforesaid view of the matter, having regard to the relationship between the parties, the nature of the claim and in the light of the averments in the plaint, the learned Civil Judge cannot be said to have committed any error in declining to reject the plaint. Thus, in exercise of revisional jurisdiction, no interference is warranted with the impugned order.

20. The Civil Revision Application, thus, stands rejected.

(N.J.JAMADAR, J.)