



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL REVISION APPLICATION NO. 44 OF 2024

Rajendra S/o. Bhagwanrao Jadhao
 Aged About 58 years,
 Occ – Agriculturist
 R/o Campus-Pura Juni Vasti, Badnera
 Dist. Amravati.

.. Applicant
 (Original defendant No.4)

Versus

- 1) Nitin S/o Babarao Kadam
 Aged About 54 years, Occ-Business
 R/o. Chhabada Plot, Amravati,
- 2) Savita S/o Shankarrao Gujar (Dode)
 Aged About 58 years, Occ – Housewife,
 R/o Ravi Nagar, Amravati
- 3) Chayya w/o Pravin Ghurde
 Aged About 45 years, Occ- Housewife
 R/o Narayan Nagar, Amravati
- 4) Yogiraj Gulabrao Shete
 Aged About 60 years, Occ – Business
 R/o Mahadev Nagar, Amravati
- 5) Prakash S/o Bhagwantrao Bobde
 Aged About 70 years, Occ – Service
 R/o Rammohan Nagar, Amravati

(Original plaintiff)

(Original defendant No.1)

.. Respondents
 (Original defendant No.2)

(Original defendant No.3)

(Original defendant No.5)

Mr. Advocate for petitioner.
 Mr. Addl.G.P. for respondent Nos.1 & 2.
 Mr. Advocate for respondent No.3.
 Mr. Advocate for respondent No.4.

CORAM : ROHIT W. JOSHI, J.

DATED : APRIL 24, 2026

ORAL JUDGMENT

(1) The present revision application is filed challenging the

order dated 02/11/2023 passed by the learned Joint Civil Judge Senior Division, Amravati on application for rejection of plaint filed vide Exh.73 in R.C.S.No.212/2004. The said suit is filed by the respondent No.1 against the present applicant and the present respondent Nos.2 to 5. The parties hereinafter be referred to as plaintiff and defendants.

(2) It is the case of the plaintiff that he has purchased the suit property from the defendant No.2 vide sale deed dated 04/06/2004 for a consideration of Rs.6,32,000/-. The plaintiff contends that the said sale deed is executed by the defendant No.2, acting through duly constituted attorney Shri Pravin Ghurde, who is husband of defendant No.2. It is the case of the plaintiff that defendant No.2 has purchased the suit property from the defendant No.1 vide registered sale deed dated 30/06/2003. The sale deed dated 30/06/2003, according to the plaintiff is executed in favour of defendant No.2 by one Yogiraj Shete acting as duly constituted attorney for defendant No.1. The plaintiff accordingly claimed ownership over the suit property. The suit is filed seeking declaration of ownership and a relief of perpetual injunction that the defendant Nos.1 and 4 should not disturb his possession over the suit property without following due process of law.

(3) The present revision petitioner is defendant No.4 in the

said suit. The defendant No.4 has entered into an agreement of sale dated 10/03/2001 with respect to the suit property with the defendant No.1. He filed a suit for specific performance of contract against the defendant No.1 which was registered as Spl.C.S.No.154/2003. The said suit came to be decreed in favour of defendant No.4 vide judgment and decree dated 06/04/2004. The defendant No.4 filed execution petition bearing Special Darkhast No.25/2004 in which, sale deed with respect to the suit property came to be executed in his favour through the process of the Court on 21/08/2009 and possession of the suit property was delivered on 05/10/2009. The said execution petition came to be disposed of on 12/10/2009.

(4) The defendant No.1, who is vendor of the defendant No.4 (revision petitioner) had filed a suit bearing Spl.C.S.No.104/2004 against Yogiraj Shete (defendant No.3), Chhaya Ghurde (defendant No.2), Nitin Kadam (plaintiff) and Prakash Bobde (defendant No.5), seeking a declaration that the sale deed dated 30/06/2003 executed by the defendant No.3 (Yogiraj Shete) acting as her constituted attorney in favour of defendant No.2 is void. She also prayed for permanent injunction restraining the defendants from disturbing her possession. The said suit came to be disposed of as withdrawn vide order dated 21/07/2011.

(5) The present plaintiff had filed R.C.S.No.212/2004, out of which the present revision arises seeking declaration of ownership and injunction against forcible dispossession as stated above. The present applicant is the defendant No.4 has filed application for rejection of plaint in the aforesaid civil suit. The said application came to be rejected against which the present revision is filed.

(6) It is the contention of Mr. Purohit learned advocate for the applicant (defendant No.4) that the plaintiff (respondent No.1) is in the habit of filing frivolous suit. Mr.Purohit states that after filing of the present suit, the plaintiff filed another suit being Spl.C.S.No.315/2004 on 09/09/2004 for setting aside the decree for specific performance of contract passed in favour of the present applicant (defendant No.4). It is stated that the said suit was initially dismissed for want of prosecution on 11/02/2009 and is restored since then on 30/11/2019. An application for rejection of plaint was also filed in the said suit which came to be rejected. Civil Revision Application No.109/2023 is pending before this Court challenging the order dated 17/07/2023.

(7) Mr. Purohit points out that, likewise, the respondent No.1/plaintiff has filed another suit being Spl.C.s.No.241/2009 seeking cancellation of sale deed dated 30/10/2009 which was executed in favour of the present applicant (defendant No.4) through Court

procedure in Spl.Darkhast No.24/2004. He states that application for rejection of plaint filed in the said suit came to be allowed vide order dated 26/04/2010.

(8) Mr.Purohit, learned advocate for the defendant No.4/applicant vehemently argued that the plaintiff is indulging in multiple litigations with respect to the same cause and is thus guilty of abuse of the legal process. He contends that the present suit seeking declaration of ownership is not maintainable since the decree for specific performance passed in favour of the applicant/defendant No.4 is not challenged in the present suit. Likewise, the sale deed executed in favour of the applicant/defendant No.4 in the execution proceeding is also not challenged. The contention is that the rejection of the plaint in Spl. C.S. No. 241/2009, wherein the decree for specific performance dated 06/04/2004 passed in Spl.C.S. No.154/2003 and the sale deed dated 04/06/2004 executed in favour of the present applicant (defendant No.4) were impugned, must necessarily entail rejection of the plaint in the present suit as well.

(9) Per contra, learned advocate for the respondent No.1 plaintiff, contends that rejection of subsequent suit being Spl.C.S. No.241/2009 cannot be a ground for seeking rejection of plaint in the present civil suit. He contends that the argument of learned advocate

for the revision petitioner is essentially one of *res judicata*, which cannot be a ground for rejection of plaint since *res judicata* is a mixed question of law and facts. Learned advocate also contends that while dealing with an application under Order 7 Rule 11, the defence of present revision petitioner (defendant No.4) cannot be considered.

(10) A perusal of plaint in R.C.S. No.212/2004, will indicate that according to the plaintiff, his vendor, the defendant No.2 had purchased the suit property from defendant No.1 vide sale deed dated 30/06/2003. The plaintiff contends that he has purchased the suit property from defendant No.2 on 04/06/2004. Going by the plaint averments, suit for specific performance was filed by the present applicant (defendant No.4) on 30/07/2003. Therefore, according to the version of the plaintiff, the vendor of defendant No.4 i.e. defendant No.1 had sold the suit property to the plaintiff's vendor i.e. defendant No.2, a month before institution of the suit for specific performance of contract. The sale deed in favour of plaintiff is executed through the constituted attorney of defendant No.2, according to his version in the plaint. The plaint averments further reveals that according to the plaintiff possession of the suit property was handed over to him on 06/03/2003 when a document titled as 'Bharana Taba Pavati' was executed. Thus according to the plaintiff, he was placed in possession of the suit property prior to the date of institution of the suit and his

sale deed is also prior to the date of institution of the suit.

(11) In view of the plaint averments, it cannot be said that the sale deed of the plaintiff is a *lis pendens* sale deed executed during the pendency of Spl.C.S.No.154/2003 i.e. the suit for specific performance of contract filed by the present applicant (defendant No.4) against the defendant No.1. Whether the prior agreement will prevail over the subsequent sale deed is a matter to be decided by the learned Civil Court on merits. Since the plaintiff's sale deed does not appear to be a *lis pendens* sale deed, the plaintiff may well succeed in the suit even in the absence of a challenge to the decree for specific performance passed in Spl.C.S.No.154/2003. Therefore, the rejection of the subsequent suit, being Spl.C.S.No.241/2009, in which the decree for specific performance and the sale deed executed pursuant thereto were challenged, may not strictly affect the maintainability and merits of the present suit.

(12) As regards the contention with respect to multiple civil suits being filed by the plaintiff with respect to same transaction, undisputedly, the present suit is filed prior in point of time. The plaint in the present suit, therefore, cannot be rejected on the ground that, subsequent to the filing of the present suit, two other suits have been instituted by the plaintiff.

(13) In view of the aforesaid, in the considered opinion of this Court, the case for rejection of plaint is not not made out. The Civil Revision Application is therefore, rejected.

[ROHIT W. JOSHI, J.]

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