IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 12 OF 2024

1. Vikas s/o Ashok Pakhare,
Age : 19 years, Occ; Agril,

2. Jayshri w/o Sopan Pakhare,
Age : 32 years, Occ; Agril,

Both R/o Khadke, Tq. Shevgaon,
District; Ahmednagar. ...**APPLICANTS**
(Original Deft. Nos. 3 & 4)

VERSUS

1. Jayashree w/o Vinodchandra Saraf,
Age : 74 years, Occ. Household,

2. Sachin s/o Vinodchandra Saraf,
Age : 46 years, Occ; Service,

3. Nilesh s/o Voinodchandra Saraf,
Age : 33 years, Occ; Goldsmith,

All R/o; Rangar Hatti, paithan,
Tq. Paithan, Dist. Aurangabad.

4. Jagdish s/o Rameshchandra Saraf,
Age : 63 years, Occ; Agril,

5. Shobha w/o Jagdish Saraf,
Age : 59 years, Occ; Household,

6. Sunita w/o Mahendra Saraf,
Age : 51 years, Occ; Household,

7. Akshay s/o Mahendra Saraf,
Age : 25 years, Occ; Service,

8. Shweta d/o Mahendra Saraf,
Age : 29 years, Occ; Household,

All R/o; At Present Rangar Hatti,
Tq. Paithan, Dist. Aurangabad.

9. Shila w/o Shrikumar Shaha,
Age : 52 years, Occ; Household,
R/o; Ghee Bazar, At Post, Nandurbar,
Tq. & Dist. Nandurbar.

10. Sandip s/o Pramodchandra Saraf,
Age; 51 years, Occ; Business,
R/o; Flat No. 8, 8th Floor,
Laboni Towers, Opp. Khadi Railway,
Station, Opp. Aundh Road, Pune.

11. Swapnil s/o Pramodchandra Saraf,
Age; 48 years, Occ. Strolonger,
R/o; Plot NO. 47, First Floor, Shrey Nagar,
Aurangabad, Tq. & Dist. Aurangabad.

12. Shashikalaben w/o Nanubhai Javheri,
Age; 78 years, Occ; Household,
R/o; 103, 'Aarti' Any Bezant Street,
Santakruj (w), Mumbai, Tq. & Dist.
Mumbai 54.

13. Chhaya @ Madalsaben w/o Bhagwati Javheri,
Age : 74 years, Occ; Household,
R/o; Tisra Rasta, Khar (W), Mumbai

14. Vijayaben w/o Pareshbhai Soni,
Age; 70 years, Occ. Household,
R/o; 'Mahadev Residency' Surat.

15. Ashokkumar s/o Devidas Parekh,
Age : 69 years, Occ; Business,
R/o; 2/3-17, 'Rutvan Residency',
Panwadi Khatriwad, Mndvi,
Surat, Dist. Surat (Gujarat),

16. Chandrakant s/o Devidas Parekh,
Age; 63 years, Occ; Business,
R/o; Panwadi, Khatriwad, Mandvi
Surat, District Surat (Gujarat),

17. Jayashriben w/o Jayeshkumar Parikh,
Age: 66 years, occ; Household,
R/o; Patodiya Pol. Opp. Jain Dersar,
Mandavi, Wadodara (Gujarat),

18. Hareshbhai s/o Thakorlal Parekh,
Age; 69 years, Occ; Business,
R/o; 505, 'Jai Complex' Near Shriram
Petrol Pump, Anand, Mahel Road, VTC,
Surat-395009 (Gujarat),

19. Dilipkumar s/o Thakorlal Parekh,
Age : 67 years, Occ; Business,
R/o; 446/1/1, Sonifaliya, Mandavi,
Dist. Surat-394160 (Gujarat),

20. Mukeshbhai s/o Thakorlal Parekh,
Age : 61 years, Occ; Business,
R/o; Sonifaliya, Mandavi,
Dist. Surat-394160 (Gujarat),

21. Shilaben w/o Narayanbhai Parekh,
Age; 63 years, Occ; Household,
R/o; Sonifaliya, Mandavi,
Dist. Surat-394160 (Gujarat),

22. Alkaben w/o Sunilbhai Parekh,
Age; 59 years, Occ; Household,
R/o; B-204, 'Parshwadarsh Complex'
Opp. Navyog College, Surat-305009. ...**RESPONDENTS.**

(Resp. Nos. 1 to 3, Orig.
Plaintiffs & Resp. Nos. 4 to 22
Orig. Defendants)

WITH

CIVIL REVISION APPLICATION NO. 13 OF 2024

1. Jagdish s/o Rameshchandra Saraf,
Age : 63 years, Occ; Agri,

2. Shobha w/o Jagdish Saraf,
Age : 59 years, Occ; Household,

3. Sunita w/o Mahendra Saraf,
Age; 51 years, Occ; Household,

4. Akshay s/o Mahendra Saraf,
Age; 25 years, Occ; Service,

5. Shweta d/o Mahendra Saraf,
Age; 29 years, Occ; Household,

All R/o; at present Rangar Hatti,
Tq. Paithan, Dist. Aurangabad. ...**APPLICANTS**
(Orig. Deft. Nos. 1, 2, 5 to 7)

VERSUS

1. Jayashree w/o Vinodchandra Saraf,
Age; 74 years, Occ; Household,

2. Sachin s/o Vinodchandra Saraf,
Age : 46 years, Occ; Service,

3. Nilesh s/o Voinodchandra Saraf,
Age : 33 years, Occ; Goldsmith,

All R/o; Rangar Hatti, paithan,
Tq. Paithan, Dist. Aurangabad.

4. Vikas s/o Ashok Pakhare,
Age; 19 years, Occ; Agril,

5. Jayshri w/o Sopan Pakhare,
Age; 32 yars, Occ; Agril,

Respondent Nos. 4 & 5
R/o; Khadke, Tq.Shevgaon,
District Ahmednagar.

6. Shila w/o Shrikumar Shaha,
Age;52 years, Occ; Household,
R/o; Ghee Bazar, At Post, Nandurbar,
Tq. & Dist. Nandurbar.

7. Sandip s/o Pramodchand Saraf,
Age; 51 years, Occ; Business,
R/o; Flat No. 8, 8th Floor,
Laboni Towers, Opp. Khadki Raikway
Station Opp. Aundh Road, Pune.

8. Swapnil s/o Pramodchandra Saraf .....Deleted as
Age; 48 years, Occ; Astrologer, per Order
R/o; Plot No. 47, First Floor, Shrey Nagar, dtd/13/8/24.
Aurangabad. Tq. & Dist. Aurangabad.

9. Shashikalaben w/o Nandubhai Javheri,
Age; 78 years, Occ; Household,
R/o 103, Aarti, Any Bezent Street,
Santakruj (w), Mumbai, Tq. & Dist.
Mumbai- 54.

10. Chhaya @ Madalsaben w/o .....Deleted as
Bhagwati Javheri, per Order
Age; 74 years, Occ; Household, dtd/13/8/2024.
R/o; Tisra Rasta, Khar (W), Mumbai.

11. Vijayaben w/o Pareshbhai Soni, ...Deleted as
Age ; 70 years, Occ; Household, per Order
R/o; 'Mahadev Residency' Surat. Dtd/13/8/2024.

12. Ashokkumar s/o Devidas Parekh,
Age; 69 years, Occ; Business,
R/o; 2/3-17, 'Rutvan Residency'
Panwadi, Khatriwad, Mandvi
Surat, Dist. Surat (Gujarat).

13. Chandrakant s/o Devidas Parekh,
Age; 63 years, Occ; Business,
R/o; Panwadi, Khatriwad, Mandvi,
Surat, District Surat (Gujarat).

14. Jayshriben w/o Jayeshkumar Parikh,
Age; 66 years, Occ; Household,
R/o Patodiya Pol, Opp. Jain Dersar,
Mandvi, Wadodara (Gujarat),

15. Hareshbhai s/o Thakorlal Parekh, ...Deleted as
Age; 69 years, Occ; Business, per Order

R/o; 505, 'Jai Complex' Ner Shriram dtd. 13.8.2024
Petrol Pump, Anand, Mahel Road, VTC,
Surat-395009 (Gujarat).

16. Dilipkumar s/o Thakorlal Parekh,
Age; 67 years, Occ; Business,
R/o; 446/1/1, Sonifaliya, Mandvi
Dist. Surat-394160 (Gujarat)

17. Mukeshbhai s/o Thakorlal Parekh,
Age; 61 years, Occ; Business,
R/o; Sonifaliya, Mandvi
Dist. Surat-394160 (Gujarat)

18. Shilaben w/o Narayanbhai Parekh,
Age; 63 years, Occ; Household,
Ro; Sonifaliya, Mandvi
Dist. Surat-394160 (Gujarat).

19. Alkeben w/o Sunilbhai Parekh,
Age; 59, Occ. Household,
R/o; B-204, 'Parshwadarsh Complex'
Opp. Navyog College, Surat-395009. ...**RESPONDENTS.**
(Resp. Nos.1 to 3 Orig. Pltffs.
& Resp. Nos. 4 to19 Orig. Defts.)

.....

Mr. R.R. Karpe : Learned Advocate for Applicants in (CRA No. 13/2024)
Mr. S.S. Gangakhedkar : Learned Advocate for Applicants in (CRA No. 12/2024)
Mr. S.A. Patil, learned Advocate h/f Mr. S.B. Chaudhari, learned Advocate for Respondent Nos. 1 to 3
Respondent Nos. 4, 5, 6, 9, 12 to 14, 16 to 18 are served.
Respondent No. 7 served through his wife.
Respondent Nos. 8,10,11, 15 and 19 are deleted.
Mr. R.R. Karpe, learned Advocate for Respondent Nos. 4 to 8 in (CRA No. 12 of 2024)

.....

CORAM : S. G. CHAPALGAONKAR, J.

Date of Reservation : 10.02.2025
Date of pronouncement : 24.02.2025

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally at the stage of admission by consent of parties.

2. Plaintiffs/Original Defendant Nos. 1 to 7 in RCS No. 78 of 2023 pending before Civil Judge, Junior Division, Paithan, impugns order dated 07.10.2023, passed below Exh. 78, rejecting their application seeking rejection of plaint under Order VII Rule 11 (a) & (d) of Code of Civil Procedure, 1908. (Hereinafter, parties are referred as per their original status in the suit for the sake of convenience and brevity.)

3. Respondent Nos. 1 to 3 -Original Plaintiffs instituted RCS No. 78 of 2023 seeking relief of partition, separate possession, permanent injunction and mesne profit against defendants. Plaintiffs contend that suit lands were originally owned by Motilal s/o Dulichand Saraf. He had a son Natvarlal and two daughters from first wife. After death of his first wife he married to Saraswatibai. He got three sons and five daughters from second marriage with Saraswatibai. After death of Motilal suit properties were mutated in the name of Natvarlal. Natvarlal transferred suit properties in name of Saraswatibai by way of partition in the year 1976-77 vide mutation entry No. 08. Saraswatibai resided with her elder son Rameshchandra. Taking benefit of said fact, Rameshchandra mutated names of his sons Jagdish and Mahendra over suit properties by way of family arrangement. Since then properties remained mutated in the name of Jagdish and Mahendra. Eventually, Jagdish and Mahendra mutated properties in name of their wives vide mutation entry Nos. 1044 and 1045 dated 31.03.2008.

4. Rameshchandra Motilal Saraf was providing share of income to his brothers Pramodchandra and Vinodchandra and also taking care of his sisters. Therefore, none asked him about suit properties or raised any claim for partition. However, upon death of Rameshchandra on 07.09.2022, defendant Nos. 1 and 2 and 5 to 7 started dealing with properties with third persons, when plaintiffs asked them, they avoided to provide information. Plaintiffs came to know that

defendant Nos. 1 and 2 had a deal of suit land and on search with office of Registrar, came to know about agreement to sale dated 22.12.2022, executed by defendant Nos. 1 and 2 in favour of defendant Nos. 3 and 4. Even defendant Nos. 5 and 6 intending to sale properties. Since defendants started dealing with properties, ignoring rights of plaintiffs, cause of action arose to file suit.

5. Defendants filed Written Statement refuting claim of plaintiffs. Independently, they filed applications below Exh. 23 under Order VII Rule 11 (a) & (d) of CPC seeking rejection of plaint on two grounds, firstly, suit is based on fictitious and illusory cause of action, secondly, suit is hopelessly barred by limitation.

6. Trial Court, after considering rival submissions rejected application filed below Exh. 23 holding that issue as to limitation as well as cause of action can be decided on trial, since both are mixed questions of law and fact.

7. Mr. Karpe, (CRA No. 13/2024) and Mr. Gangakhedkar, (CRA No. 12/2024) learned Advocates appearing for applicants criticized the impugned order contending that trial Court failed to appreciate contents of plaint in proper perspective, so also misapplied law, as such, fell in error while rejecting application. In support of their contentions they relied upon following judgments :

(i) Dahiben Vs. Arvindbhai Kalyanji Bhanus (Gajra) Dead Through Legal Representatives and Others. [1]

(ii) Ramisetty Venkatanna and Anr Vs. Nasyam Jamal Saheb and Ors. [2]

(iii) Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) By Legal Representatives. [3]

(iv) Murugan and Others Vs. Kesava Gounder (Dead) Through Legal Representatives and Others. [4]

1 *(2020) 7 SCC 366*
2 *AIR Online 2023 SC 459*
3 *2020) 16 SCC 601*
4 *(2019) 20 SCC 633*

(v) Roop Lal Sathi Vs. Nachhattar Singh. [5]

(vi) Avinash Tanu Govekar and Others Vs. Anjani A. Govekar and Others. [6]

(vii) V. Huligeppa V. Lingappa Since Deceased by His Lrs. Vs. V. Bheema and Ors. [7]

(viii) Smt. Lajwant Kaur and Another Vs. Abanshi Singh and Others. [8]

(ix) Chhotelal Babulal and Another Vs. Premlal Girdhalilal and Others. [9]

8. The parameters for exercise of jurisdiction under Order VII Rule 11 (a & d) of CPC has been elaborately discussed by the Supreme Court of India in Dahiben (supra) and same has been reiterated in subsequent judgment in **Srihari Hanumandas Totala vs Hemant Vithal Kamat**[10] and in **Remesh Venkat Vs. Sasyan Javmal Saheb.**[11] Prior to that, in case of **T. Arvindan Vs. T.V.Satyapal,** [12] **P.V. Guru Raj Reddy & Anr vs P. Neeradha Reddy & Ors,** [13] **Chotanben and Anr. vs Kiritbhai Jalkrushnabhai Thakkar and Ors.** [14] Important aspects of Order VII Rule 11 (a) & (d) have been discussed. The summary of law as has been evolved till this date can be stated as below :

> "*Remedy under Order 7 Rule 11 is an independent and special remedy, wherein court is empowered to summarily dismiss a suit at the threshold without proceeding to record evidence and conducting trial, on the basis of evidence adduced, if it is satisfied that action should be terminated on any of the grounds contained in this provision.....*
>
> *The underlying object of Order 7 Rule 11(a) is that, if in a suit no cause of action is disclosed, or suit is barred by limitation under Rule 11(d), the Court would not permit plaintiff to unnecessarily*

5 *AIR 1982 SC 1559,*
6 *2024 SCC OnLine Bom 624*
7 *AIR Online 2022 KAR 1122*
8 *AIR 1979 P&H 268*
9 *AIR 1977 MP 34.*
10 *(2021) 9 SCC 99*
11 *A.I.R. online 2023 SC 459*
12 *(977) 4 SCC 461*
13 *2015 SCC 331*
14 *(2018) 6 SCC 422.*

> *protract the proceeding in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.*
>
> *A duty is cast on court to determine, as to whether plaint discloses a cause of action by scrutinizing the averments in the plaint, read in conjunction with documents relied upon or whether suit is barred by any law.*
>
> *In exercise of powers under this provision, the court would determine if assertions made in the plaint are contrary to the statutory law, or judicial dicta, for deciding whether the case for rejection of plaint at the threshold is made out.*
>
> *Similarly, the test for exercising the power under Order 7 Rule 11 is that, if the averments in plaint are taken in entirety, in conjunction with documents relied upon, would the same result in a decree being passed.*

9. The aforesaid legal position has been recently reiterated by the Supreme Court in the case of ***Ramishetti Venkatanna and another vs. Nasyam Jamal Saheb and others*** [15] ***and in case of Raghavendra Sharan Singh vs. Ram Prasanna Singh through LRs***[16]***.***

10. At this stage, reference can be given to observations of Supreme Court in case of ***"Swami Atmananda and others vs. Sri. Ramakrishna Tapovanam and others"***[17]***,*** wherein Supreme Court observed as under :-

> *"Cause of action" means every fact which would be necessary for plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit. While considering an application under Order 7 Rule 11 CPC, what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory.* ***What is required is that a clear right must be made out in the plaint****. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, it should be nipped in the bud, so that*

15 ***(2023) 8 Scale 294***

16 ***(2020)16 SCC 601***

17 ***(2005) 10 SCC 51***

bogus litigation will end at the earliest stage. The court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court."

11. In yet another judgment, in the matter of ***"T. Arivandandam vs. T.V. Satyapal and another"*** [18] Supreme Court observed as under :-

"The learned Munsiff must remember that if on a meaningful – not formal – reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11, C.P.C., taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits."

12. In light of aforesaid exposition of law in present case, if the plaint along with documents is considered following factual aspects can be carved out :

(i) Suit property is originally owned by Motilal Saraf and upon his death it was mutated in the name of eldest son from his first wife i.e. Natwarlal.

(ii) During life time of Natwarlal, mutation entry No. 08 was taken in name of Saraswatibai stating that Natwarlal partitioned and transferred suit property in name of his mother Saraswatibai.

(iii) Thereafter, under mutation entry No. 190 Saraswatibai mutated name of her grand-son i.e. sons of eldest son Rameshchandra on the basis of unregistered partition deed.

13. Saraswatibai had three sons and five daughters. Plaintiffs and defendants are claiming their rights through Motilal and Saraswatibai. In that view of the matter, so as to understand controversy, reference to genealogy would be necessary which is given here as below :

18 ***(1977) 4 SCC 467,***

MOTILAL SARAF

(1st Wife) (Dead)	(1st Wife) (Natwarlal) (Son)	(2nd Wife) Saraswatibai (Expired in 1989)

Rameshchandra (Son)	Pramodchandra (Son)	Vinodchandra (Son)	Urmilaben (Daughter)	Chitraben (Daughter)
	Deft Nos.9 & 10	Pltff.Nos 1to 3 Wife & Son	Deft. No. 14 to16 (Sons & daughters	Deft.Nos. 17 to21 Sons & Daughters

Sheela, Deft. No. 8 (Daughter)	Jagdishchandra (Son) Deft. No. 1	Mahendra (Son) Expired in 2015	Deft. Nos. 1 to 13 Daughters.
	Wife Shobha Deft. No. 2 (2008 ME 1044)	Wife Sunita Deft. No. 5 Son Akshay & Daughter Shweta, Deft Nos. 6 & 7 (ME No. 1045, to wife) (ME No.1569 2016 to Son & Daughter)	

14. Mr. Karpe, (CRA No. 13/2024) and Mr. Gangakhedkar, (CRA No. 12/2024) learned Advocates appearing for applicants submit that Saraswatibai had acquired absolute title over suit property. She mutated suit properties in the name of her grand sons namely Jagdish and Mahendra, therefore, plaintiffs, who are widow and sons of Vinodchandra could not have claimed any right in property. Suit property lost joint status when Natwarlal partitioned the same and given it to Saraswatibai. Saraswatibai who was absolute owner. Mr. Gangakhedkar, learned Advocate would further submit that first mutation entry in the name of Saraswatibai was taken in the year 1976 and thereafter, mutation entry No. 190 in name of her grand sons' was taken some time in year 2003. Thereafter, in year 2008 Jagdish and Mahendra i.e. grand sons of Saraswatibai transferred lands in name of their wives. All aforesaid mutation entries clearly depict exclusive ownership and possession enjoyed by Saraswatibai, thereafter Jagdish and Mahendra acquired ownership. It is therefore, evident that rights, if any, in favour of plaintiffs have been excluded firstly in 1976, then in 2003 and

2008. Therefore, applying Article 110 of the Limitation Act, suit could have been brought within a period of 12 years therefrom. Plaintiffs cannot be permitted to open stale claim on the basis of fictitious and illusory cause of action.

15. Apparently the averments in plaint make a reference to mutation entries, initially in the name of Natvarlal, then in the name of Saraswatibai, thereafter in the name of of Jagdish and Mahendra. However, question is as to whether, such mutation entries creates substantive rights in favour of Saraswatibai as owner in exclusion of rights of other legal representatives of Motilal and whether, grand sons of Saraswatibai i.e. Jagdish and Mahendra acquired absolute title on basis of mutation entries as regards partition by Saraswatibai. All these questions require evidence at trial. The contentions raised in defence that Saraswatibai acquired absolute title and entitled to dispose of property or Jagdish and Mahendra acquired title to suit properties under mutation entries cannot be appreciated at this stage. It is trite that mutation entries itself do not confer title. Needless to state that, pre existing rights if acknowledged under mutation entry, flow of title can be presumed. Therefore, unless preexisting rights or transfer of property under any instrument, decree or title deed, preceding mutation entry is brought on record, presumption as to title cannot be drawn. The Issue of limitation also needs trial, particularly so as to ascertain date of knowledge of exclusion of rights of plaintiff from joint family property. Plain reading of Article 110 of the Limitation Act depicts that limitation of 12 years shall begin for seeking partition from date when exclusion of rights came to knowledge of laintiff. Therefore, merely on the basis of mutation entry, unless specific knowledge of exclusion of right is brought on record, plaintiffs cannot be unsuited at the nascent stage of suit.

16. There cannot be quarrel as to proposition of law espoused under judgments relied upon by learned Advocates appearing for applicants. However, conclusion drawn by trial Court that issue as to exclusion of rights and nature of cause of action needs trial, in the facts of case cannot be faulted. Remedy under under Order VII Rule 11 (a & b) of CPC is a drastic step. Unless upon recording of stipulations in plaint and documents annexed thereto, definite conclusion as to bar of suit by limitation is discernible, suit cannot be terminated on defence

of limitation.

17. Even cause of action is bundle of facts. In present case, plain reading of the averments in plaint shows that when defendants started dealing with property with outsiders of family, particularly upon death of Rameshchandra, cause of action to file present suit arose. Question, if cause of action is camouflage, cannot be determined simply on the basis of contents of plaint and annexures thereto.

18. In result, no case is made out to interference in impugned order, in exercise of revisional jurisdiction of this Court under Section 115 of CPC.

19. In result, both Civil Revision Applications stand rejected.

20. Rule is discharged.

(S. G. CHAPALGAONKAR)
JUDGE

mahajansb/