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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 120 OF 2022**

Shri Shripad Tuljaram Banwari ... Applicants
(Kachi) and Others

Vs.

Smt. Jayshree Babalal Kachi ... Respondents
and Others

Mr. Vijay Upadhyay for the Applicant.

Mr. Ajinkya Udane a/w. Sufyaan Mansuri for Respondent
Nos. 1, 2 and 3.

Mr. Pratap Patil for Respondent No. 4.

CORAM : GAURI GODSE, J.

DATE : 24th DECEMBER 2025

ORDER :

1. This civil revision application is filed by defendant nos. 1 to 3 to challenge the order passed by the trial court rejecting their application under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("CPC"). The grounds of objection for rejection of the plaint were threefold. Firstly, on the ground that the plaint does not disclose a cause of action, secondly, the suit is not properly valued, and thirdly, the suit is barred by the law of limitation.

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2. Learned counsel for the applicants relies upon the decision of the Apex Court in the case of ***Rajendra Bajoria and Others vs. Hemant Kumar Jalan and Others***¹ to support his submissions that the suit filed by the legal heirs of the original partners would not be maintainable. He relies upon paragraph 18 of the judgment. Learned counsel for the applicants submits that the Apex Court held that partners do not have any right, title, or interest in the assets and properties of a firm so long as the firm is carrying on business. Hence, the heirs of some of the partners cannot maintain any claim in respect of the assets and properties of the firm. He submits that the Apex Court accordingly rejected the plaint with a prayer for declaration of co-ownership of the assets and properties of the partnership firm on the ground that the suit was not maintainable.

3. To support his submissions, learned counsel for the applicant also relies upon the decision of this court in the case of ***M/s. Mutha Industries, A Partnership firm and Others vs. Mrs. Meena Milind Bhansali and Others***². He submits that this court also rejected the plaint as barred in law for having no cause of action in respect of the partnership firm and its

¹ 2021 SCC OnLine SC 764

² CRA-139-2021 dt. 13th October 2021

properties.

4. Learned counsel for the applicants submits that even in the present case, the plaintiffs are seeking a declaration of their rights in respect of the partnership firm on the ground that they, being heirs and legal representatives of the deceased partner, would be entitled to the suit property. He refers to the pleadings in the plaint where the plaintiffs have pleaded that the suit property originally belonged to the Banwari family and was held by the partnership firm, M/s. Banwari Brothers. He therefore submits that based on the pleadings in the plaint, it is clear that the cause of action to seek the declaratory relief is based on the plaintiff's claim in respect of the suit property originally owned by the partnership firm. Hence, the legal principles settled in the aforesaid decisions would squarely apply to the present case.

5. Learned counsel for the applicants further points out that the cause of action pleaded by the plaintiffs to have been arose on 30th September 2019 would not be a meaningful cause of action as the plaintiffs are claiming through deceased Babalal who was untraceable since 16th

June 1986 and a declaration to that effect was granted by the civil court on 3rd July 2017 as pleaded by the plaintiff in paragraph 2 of the plaint. He therefore submits that the plaint also deserves to be rejected on the ground that it is time-barred. Learned counsel for the applicants, therefore, submits that the impugned order refusing to reject the plaint at the threshold would require interference by this court.

6. Learned counsel for the plaintiffs supports the impugned order. He submits that the prayers in the suit are for a declaration as defendant nos. 1 to 3 claim exclusive ownership in respect of the property owned by the partnership firm. Hence, the legal principles settled in the decisions relied upon by the learned counsel for the applicants would not apply to the present case for rejecting the plaint at the threshold.

7. Learned counsel for the plaintiffs submits that the objection raised on behalf of the applicants that there were only two surviving partners, i.e. Babalal and Tuljaram and therefore on the death of one of the partners, the partnership firm stood dissolved, and therefore deceased Tuljaram was shown as proprietor and owner, cannot be considered at the

stage of Order VII Rule 11 of the CPC. He relies upon a letter dated 30th September 2019 issued by the market committee indicating the names of the partners. He therefore submits that in view of the pleadings in the plaint to seek a declaration as prayed would warrant a trial, as the plaintiffs would be entitled to lead evidence in support of the cause of action and the prayers for declaration.

8. Learned counsel for the plaintiffs submits that the declaration of death of Babalal was granted by the trial court only on 3rd February 2017. According to the plaintiffs, the cause of action arises in view of the notice of defendant no.4 - society dated 30th September 2019, which is pleaded by the plaintiffs in paragraph 7 calling upon the plaintiffs to respond to the application dated 28th June 2019 filed by defendant nos. 1 to 3 for recording their names in respect of the suit property as heirs of late Tuljaram.

9. Learned counsel for the plaintiffs, therefore, submits that the cause of action in the suit to claim the declaration is pleaded in paragraphs 4 and 6 of the plaint. In view of the claim raised by defendant nos. 1 to 3 on exclusive ownership through one of the partners, the defendants also prayed for

an injunction restraining the defendants from obstructing the rights of the plaintiffs. He therefore submits that the plaint cannot be rejected at the threshold.

10. I have carefully perused the pleadings in the plaint. The plaintiffs are heirs and legal representatives of the late Babalal, who was untraceable since 16th June 1986. The suit filed by the plaintiffs for a declaration was allowed on 3rd February 2017, declaring the civil death of Babalal. The plaintiffs further pleaded that the Banwari family held the suit property in the name of a partnership firm. However, one of the partners, i.e. deceased Tuljaram, got his name recorded as the exclusive owner. Hence, after the death of Tuljaram, defendant nos. 1 to 3 claimed exclusive right in respect of the suit property, which originally belonged to the partnership firm.

11. To support their claim regarding the original title of the suit property and the particulars of the partners, the plaintiffs have relied upon a letter dated 30th September 2019 issued by the market committee in respect of the suit property, indicating the names of all the partners. The plaintiffs have objected to the application filed by defendant nos. 1 to 3 for

recording their names as owners of the suit property. Thus, in view of the pleadings regarding ownership of the suit property of the partnership firm, the plaintiffs have prayed for a declaration that defendant nos. 1 to 3 are not entitled to claim right, title and interest in respect of the suit property. The plaintiffs have accordingly also prayed for an order of injunction to protect the suit property.

12. In the decision of the Apex Court in the case of ***Rajendra Bajoria***, the plaintiffs had prayed for a declaration that they, along with the defendants, were entitled to assets and properties of the partnership firm as heirs of the original deceased partners. The plaintiffs had therefore sought a declaration that they, along with the defendants, would be entitled to represent the partnership firm. With reference to these prayers claiming rights by the heirs of the original partners, the Apex Court by referring to the provisions of the Partnership Act regarding the dissolution of the partnership firm held that the cause of action pleaded in the plaint to seek relief based on the ground that they were heirs and legal representatives of the original partners would not constitute a meaningful cause of action. It was thus held that

the partners had no right, title, or interest in the firm's assets so long as the firm was carrying on its business. Thus, it was held that the plaintiffs, as legal heirs of some of the original partners, cannot maintain any claim in respect of the assets and properties of the firm. Hence, the plaint was rejected under Order VII Rule 11 of the CPC.

13. Similarly, in the case of *M/s. Mutha Industries, A Partnership firm*, this court was dealing with a suit seeking a declaration that the partnership-cum-death deed was null and void and for issuing directions to add the plaintiffs as partners of the partnership firm. Considering the facts of the case and the relief sought against the partners of the partnership firm, this court allowed the application under Order VII Rule 11 and rejected the plaint at the threshold. This court also dealt with the objection of the bar under Order XXIII Rule 3A of the CPC. This court, while referring to the legal principles settled by the Apex Court in *Rajendra Bajoria* held that the plaint also sought relief for a decree in the form of dissolution of the firm and for winding up of the firm and release the assets and properties of the firm by collecting monies due to the firm and payment of its debts. Hence, in

view of the bar under the provisions of Sections 40, 42, 43, 44 and 48 of the Indian Partnership Act, 1932, the prayers seeking dissolution of the firm were held to be barred and thus liable to be rejected at the threshold.

14. In the present case, the plaintiffs have claimed that the partnership firm owns the suit property. Hence, defendant nos. 1 to 3 would not be entitled to seek any exclusive right, title and interest on the ground that they are heirs and legal representatives of one of the partners. The plaintiffs have therefore sought a declaration that the right, title, and interest in the suit property belong to the partnership firm.

15. The grounds of objections raised by contending that the deceased Babalal and deceased Tuljaram were the only partners and therefore on the death of Babalal, Tuljaram alone was entitled to the suit property on the ground that the partnership firm gets dissolved, cannot be decided based on the averment in the application for rejection of the plaint. The objection to the valuation of the suit also cannot be decided under Order VII Rule 11 of the CPC. The plaint can be rejected under clauses (b) or (c) of Rule 11 of Order VII only if there is non-compliance with the directions for correcting

the valuation or the payment of court fees. In the present case, no such directions have been issued. Hence, the plaint cannot be rejected at the threshold.

16. It is a well-established legal principle that the issue of rejection of the plaint under Order VII Rule 11 has to be ascertained from the averments in the plaint and the documents annexed to the plaint. The grounds raised in the application cannot be the basis for rejecting the plaint at the threshold. Thus, in view of the aforesaid facts and the pleadings in the plaint, the plaintiffs would be entitled to lead evidence to prove their cause of action and that the suit is within limitation.

17. Considering the pleadings and the prayers in the present suit, the legal principles relied upon by the learned counsel for the applicants on the bar in view of the provisions of the Partnership Act would not apply in the present case. The trial court has therefore rightly refused to reject the plaint at the threshold. The Civil Revision Application would not warrant any interference as there is no jurisdictional error or any other manifest error in the reasons recorded in the impugned order.

18. The Civil Revision Application is therefore rejected.

[GAURI GODSE, J.]