IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 643 OF 2009

Dattatraya D. Warde and anr. .. Applicants/Petitioners
vs.
Nagnath @ Gananjay Dattaraya Warde and anr. .. Respondents

None for the Applicants/Petitioners.

CORAM : M. S. SONAK, J.
DATE : 8 May, 2015.

P.C. :-

1] None for the petitioners.

2] This Civil Revision Application questions the order dated 31 December 2008 by which the learned Civil Judge has rejected the petitioners' applications under Order 7 Rule 11 of the Civil Procedure Code, 1908 (CPC).

3] In the present case, if the applications under Order 7 Rule 11 of the CPC are perused, then it appear that the objections raised by the petitioners to the maintainability of the suit are yeiling, not objection which can be effectively considered at the stage of deciding an application under Order 7 Rule 11 of the CPC. The petitioners, original defendants in the suit, alleged that the suit for

partition is false or the the plaintiffs had no *locus standi* to file a suit, because the suit property were self acquired by the defendants. All these are obviously matters of defence, which will have to be established in the course of trial.

4] There is a vague issue raised by reference to the provisions contained in Order 2 Rule 2 (3) of the CPC and Section 11 of the CPC. Again, these are matters of defence, which cannot be gone into at the stage of deciding an application under Order 7 Rule 11 of the CPC.

5] There is no jurisdictional error in making of the impugned order. Accordingly, Civil Revision Application is dismissed. There shall be no order as to costs.

6] After the order was made, Mr. Rohit Joshi, learned counsel appeared and stated that Ms Gauri Godse, learned counsel, who appears for the petitioners could not remain present on account of some difficulty. Mr. Joshi, was afforded an opportunity to argue the matter, but he stated that he has no instructions to argue the matter.

(M. S. SONAK, J.)