

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CIVIL REVISION APPLICATION NO.3 OF 2014

(Shri Vyanktesh @ Vilas s/o Wamanrao Ambekar ..vs.. Shri Prakash @ Diwakar s/o Wamanrao
Ambekar and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.
DATED : 16-1-2015

Heard Shri S.P. Dharmadhikari, the learned Senior Advocate assisted by Shri K.N. Shukul, the learned Advocate for the applicant and Shri A.V. Khare, the learned Advocate for the non-applicant Nos.1 to 4.

2. The civil revision application is filed by the original defendant challenging the order passed by the trial Court rejecting the application under Order VII Rule 11 of the Code of Civil Procedure.

3. The applicant-original defendant had filed the application under Order VII Rule 11 contending that the plaint does not disclose cause of action and that the claim made by the non-applicants/plaintiffs is barred by *res judicata* in view of the adjudication in Special Civil Suit No.643/1997.

4. After going through the plaint, I find that the cause of action is disclosed and this is rightly considered

by the learned trial Judge. The challenge raised on behalf of the applicant in this regard cannot be accepted.

5. As far as the challenge raised by the applicant that the claim made by the non-applicants is barred by *res judicata*, in my view, it is a mixed question of fact and law and will have to be decided by the trial Court after framing issue on that point and giving opportunities to the parties to prove their contentions.

6. With the above observations, the civil revision application is disposed. The order passed by the learned trial Judge is modified with directions to frame issue on the point of *res judicata* and decide the issue along with other issues on merits.

In the circumstances, the parties to bear their own costs.

JUDGE