

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 238 OF 2016

Changuna Nama Alias Namdeo Kadu and ors. .. Petitioners

vs.

Mathura D. Kadu and ors. .. Respondents

Mr. Sachin S. Punde for the Petitioners.

CORAM : M. S. SONAK, J.

DATE : 08 JULY 2016.

P.C. :-

1] The challenge in this petition is to the order dated 29 January 2016 made by the 2nd Joint Civil Judge, Junior Division, Panvel (Trial Court) refusing to reject the plaint under Order 7 Rule 11 of the C.P.C.

2] Mr. Sachin Punde, learned counsel for the petitioners (original defendant Nos.3 and 9 to 11), has submitted that from the bare perusal of the averments in the plaint, it is quite evident that no cause of action is disclosed. Mr. Punde submitted that the plaintiffs and the defendant Nos.1 to 11 cannot be said to be members of a Hindu joint family particularly since the plaintiff no.1 is the heir of the deceased son of defendant No.3. The defendant No.3 is the mother-in-law of the plaintiff No.1. Mr. Punde submitted that in

terms of Section 14 of the Hindu Succession Act, 1956, the property of a female Hindu is to be regarded as her absolute property. For all these reasons, Mr.Punde submitted that the plaint in the present case, was required to be rejected for non-disclosure of any cause of action.

4] Having considered the aforesaid submissions, perused the plaint as well as the impugned order, in my judgment, there is no case made out to interfere with the impugned order. This is because whilst considering any application for rejection of plaint under order 7 Rule 11 of the C.P.C., the defence, on merits which the defendants might have, is quite irrelevant. Upon consideration of averments in the plaint as they stand, it cannot be stand that there is failure to disclose cause of action. Whether any case is ultimately made out for grant of reliefs as claimed by the plaintiffs or not is not a matter which is required to be addressed at the stage of deciding an application under Order 7 Rule 11 of the CPC. Considered from this perspective, there is no case made out to interfere with the impugned order.

5] This revision application is therefore, dismissed. There shall however, be no order as to costs.

6] It is however, clarified that the observations made in the impugned order or for that matter the present order, are only *prima facie* and in the context of deciding the application under Order 7 Rule 11 of the CPC. Therefore, the Trial Court need not be influenced by such observations at the stage of deciding the main suit on merits.

(M. S. SONAK, J.)

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