

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 264 OF 2016**

Shri Shankar Pandu Khude

..Applicant

Vs

Kumar Devapa Chougule and
Ors

.. Respondents

Mr.Pradeep D. Dalvi, Advocate for Applicant.

Mr.S.S.Koregave, Advocate for Respondents no. 1,2,4 and 7.

CORAM : R.G.KETKAR,J.

DATE : 22/12/2016

PC:

1. Heard Mr. P.D.Dalvi, learned counsel for the applicant and Mr.S.S.Koregave, learned counsel for respondents no.1 to 7 at length.

2. By this application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), applicant, hereinafter referred to as 'defendant', has challenged the judgment and order dated 9.12.2015 passed by the learned 4th Jt. Civil Judge, Jr. Dn, Kolhapur below Exhibit -13 in Regular Civil Suit No. 120 of 2014. By that order, the learned trial Judge has rejected the application made by the defendant under Order VII, Rule 11(a) of C.P.C. for rejection of plaint on the ground that for want of cause of action, plaint is liable to be rejected.

3. In support of this application, Mr. Dalvi has taken me through the suit instituted by the respondents-plaintiffs. He submitted that the land bearing Gat no.162A admeasuring 18 R

exclusively belongs to the plaintiff. Land bearing Gat no.162B admeasuring 44 R exclusively belongs to the defendants. This is what has been stated by the plaintiffs in paragraph 3. He invited my attention to paragraph 9 wherein cause of action is pleaded by the plaintiffs. He submitted that in prayer clause (a) the plaintiffs have prayed for dividing the partition in the properties after fixing boundaries by preparing maps and in the event of dispute between the parties in future, appropriate orders may also be passed. By prayer clause (b), the plaintiffs have prayed for sending for separation of share to Collector under section 54 of C.P.C

4. Mr. Dalvi submitted that the plaintiffs are not coparceners and rather they are strangers. The Civil Court has no jurisdiction to prepare the map. He submitted that as the suit does not disclose any cause of action, plaint is liable to be rejected under Order VII, Rule 11 of C.P.C

5. On the other hand, Mr. Koregave supported the impugned order. He has invited my attention to paragraph 13 of the written statement and submitted that the defendants have prayed for fixing boundaries and preparing the map. He also relied upon the decision of the Apex Court in the case of E.Achuthan Nair Vs. P. Narayanan Nair and Anr, AIR 1987 SC 2137 to contend that the suit for demarcating boundary of the property is maintainable.

6. I have considered the rival submissions advanced by the

learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the defendant has filed application under Order VII, Rule 11(a) of C.P.C. for rejection of plaint. It is settled position of law that while considering the application under Order VII, Rule 11(a), the Court has to consider only averments made in the plaint and not the defence set up by the defendant. Perusal of the plaint in its entirety clearly shows that the suit is essentially for fixing boundaries of the property. In the case of E. Achuthan Nair (supra), the Apex Court has held that a suit for demarcating boundary of property is maintainable but a dispute regarding identification of the boundary between the two adjacent land owners is certainly a dispute of a civil nature and in view of Section 9 of C.P.C, it is not barred either expressly or impliedly. For the reasons stated in paragraphs 6 and 7 of the impugned order, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed.

(R.G.KETKAR, J.)