

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

Shahenaz Begum w/o Shaikh Abdul Rashid APPLICANT
Age - 60 years, Occ - Household & Agriculture
R/o Vijay Nagar, Mustafaguda,
Purna, Taluka - Purna
District - Parbhani

Shahajadi Begum w/o Syed Umar
Age - 75 years, Occ - Nil
R/o Dilkash Chowk, Gangakhed
Taluka - Gangakhed, District - Parbhani

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DATE : 22nd MARCH, 2017

1. Heard learned advocate for the applicant.
2. The applicant, who is defendant in Regular Civil Suit No. 117 of 2016 is before this court against rejection of application Exhibit-15. Exhibit-15 had been preferred purporting to pursuant to Order VII, Rule 11 (a) of the Civil Procedure Code, since according to the applicant, the plaint lacks cause of action.
3. Learned advocate for the applicant submits that the plaintiff in Regular Civil Suit No.117 of 2016 had granted suit

property - land survey No.103 admeasuring 80 *Are*, situated at Gangakhed to the defendant in 2010 by *Hiba*. There had been litigation in respect of said property bearing Regular Civil Suit No. 161 of 2010 against the plaintiff, which terminated into compromise and an attempt to challenge the decision by filing regular civil appeal by the plaintiff failed as delay condonation application to file appeal against decree in regular civil suit No. 161 of 2010 had been rejected. The *Hiba* has been acted upon and revenue entries accordingly have taken place. Learned advocate further submits that there is yet another litigation bearing Regular Civil Suit No.171 of 2013 which is pending in respect of suit property at the instance of Syed Akbar where the plaintiff and the defendant are parties and the plaintiff has admitted of having executed *Hiba*. Learned advocate submits that the matter, as such, is hit by principles analogous to *res judicata* and further may be hit by order II, Rule 2 of the Civil Procedure Code.

4. Impugned order depicts that application Exhibit - 15 had been moved pursuant to Order VII, Rule 11 (a) of the Civil Procedure Code contending that the plaint does not disclose any cause of action. Learned advocate has taken me through the plaint, as has been filed. Perusal of the plaint discloses that it is

contended that the *Hiba* in favour of defendant has been got executed playing fraud and undue influence and, as such, the plaintiff intends to revoke the same and had accordingly requested the defendant, however, the same had been declined in the month of May, 2016 as well as there have been further threatenings giving rise to institution of suit constituting causes of action. Perusal of the impugned order of trial court reveals that the learned trial judge has considered that although the ingredients of *Hiba* might have been fulfilled, yet contention of the plaintiff is revocation is being sought due to non fulfillment of the purpose for which said has been granted and the issue emerges to be a triable issue.

5. It does not appear at this stage, to be a case wherein it can be said that the plaint lacks cause of action or that plaint does not disclose any cause of action in order to be covered by Order VII, Rule 11 (a) of the Civil Procedure Code.

6. In the circumstances, it does not appear to be a case wherein revisional powers would be required to be exercised. Civil Revision Application, as such, stands rejected.

[SUNIL P. DESHMUKH, J.]