

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 9390 OF 2016

1. Meena w/o Ashok Kadaskar
age 47 years, occ. Agril
 2. Vikaram s/o Gajanan Dhumal
age 44 years, occ. Agril
 3. Gajaan s/o Shankarrao Dhumal
age 74 years, occ. Agril
- All r/o Kolhar (Bk), Tq. Rahata
District Ahmednagar for himself
& General Power of Attorney holder
of petitioner no. 2.

.. PETITIONERS

VERSUS

1. The State of Maharashtra
Through its Govt. Pleader
High Court of Mumbai
2. Gorkashnath s/o Yadav Shelke
age 50 years, occ. Agril
3. Shivaji s/o Sonyabapu Shelke
age 38 years, occ. Agril
4. Dattatraya s/o Mahadu Shelke
age 55 years, occ. Agril
5. Anitket s/o Pandurang Kharde
age 28 years, occ. Agril
6. Bhaskar s/o Trimbak Shelke
age 48 years, occ. Agril
All r/o Kolhar (Bk) Ranshenda
Shelke Vasthi, Tq. Rahata
Dist. Ahmednagar.
7. Grampanchayat
Kolhar (Bk), Tq. Rahata
District Ahmednagar
Through Village Development
Officer
8. Haushiram s/o Bhanudas Shelke

age 49 years, occ. Agril
Both r/o Kolhar (Bk)
Tq. Rahata, Dist. Ahmednagar

.. RESPONDENTS

Mr. G.G. Deshpande, advocate for petitioners.
Mr. S.B. Pulkundwar, AGP for the State.
Mr. V.H. Dighe, advocate for respondents 2, 4, and 8.

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CORAM : S. B. SHUKRE, J.
DATE : 24th JANUARY, 2017.

ORAL JUDGMENT :

1. Heard.
2. Rule. Rule made returnable forthwith. Heard finally by consent.
3. An application vide Exh. 35 under Order 7 Rule 11 of the Code of Civil Procedure was filed by petitioners on the ground that the plaint does not disclose the cause of action.
4. It is the contention of learned counsel for petitioner that the suit road, in respect of which the claim is being laid by the original plaintiffs, actually has been held to be belonging to defendant no. 1 as per the decree passed in suit and, therefore, there is no cause of action for the plaintiffs to file the present suit.
5. It is well settled law that while deciding the application under Order 7 Rule 11 of the Code of Civil Procedure, on the ground that plaint does not disclose cause of action, the Court is required to consider only what is averred in the plaint and, upon considering it as a whole, the Court has to

decide as to whether or not the plaint discloses any cause of action. It is also well settled law that there is difference between absence of cause of action and non-disclosure of cause of action.

6. When the impugned order is examined on the basis of above settled principles of law, one would find that no patent illegality, perversity or arbitrariness has been committed by the learned Jt. Civil Judge, Senior Division, Kopargaon. There is no merit in this petition and it deserves to be dismissed.

7. Writ petition stands dismissed with costs.

8. Rule discharged.

(S. B. SHUKRE)
JUDGE

dyb