

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
***CIVIL APPELLATE JURISDICTION***

**CIVIL REVISION APPLICATION NO. 350 OF 2018**

**Sudam Shankar Tamhane & Ors.**

**..... Applicants**

**VERSUS**

**Dilip Haribhau Tamhane & Ors.**

**..... Respondents**

Mr.P.S.Dani, Senior Advocate, i/b. Ganesh Bhujbal for the Applicants.

Mr.Ajinkya Udane for the Respondent nos. 1 to 3.

**CORAM : R.D. DHANUKA, J.**

**DATE : 20<sup>th</sup> AUGUST, 2018**

**P.C.**

Heard learned counsel for the parties.

2. Admit. Learned counsel appearing for the respondent nos. 1 to 3 waives service. Heard finally by consent of parties.

3. By this civil revision application filed under section 115 of the Code of Civil Procedure, 1908, the applicants have impugned the order dated 22<sup>nd</sup> February, 2018 passed by the learned Civil Judge, Junior Division, passed by the applicants (original defendants) learned trial judge dismissing the application filed by the applicants (original defendants) under Order 7 Rule 11(a) and (d) of the Code of Civil Procedure, 1908 on three grounds.

4. Mr.Dani, learned senior counsel for the applicants invited my attention to the list of documents referred to and relied upon by the applicants before the learned trial judge annexed at Ex.D and more

particularly documents at serial nos. 127 and 128 thereof in support of the submission that the property in question was not an agricultural land and was required to be valued according to the ready reckoner which was referred to and relied upon at serial no.128. He submits that the entire order passed by the learned trial judge rejecting the objection raised by the applicants about the pecuniary jurisdiction of the trial court has been brushed aside on the erroneous premise that the applicants did not produce copy of the ready reckoner of the year 2015-2016 and any other documents to show that the suit property was not an agricultural land.

5. Learned senior counsel also invited my attention to section 51(A) of the Bombay Agricultural Debtors Relief Act, 1947 in support of his submission that the civil suit was already barred under section 51(A). The said averment has been also brushed aside by the learned trial judge in violation of section 51(A) of the said Act.

6. Learned senior counsel also raised an issue of limitation and would submit that the father of the plaintiff had already issued a notice to the deceased Krishna on 19<sup>th</sup> December,1957 and partition has already taken place and thus suit for partition filed by the plaintiffs in the year 2015 was *ex-facie* barred by law of limitation.

7. Learned counsel for the respondents at this stage states that his clients have no objection if the impugned order dated 22<sup>nd</sup> February,2018 is set aside and the application filed by the applicants under Order 7 Rule 11(a) and (d) of the Code of Civil Procedure, 1908

is restored to file before the learned trial judge for deciding the application afresh. Statement is accepted.

8. Though in my *prima-facie* view, the applicants have made out a case for allowing the said application filed under Order 7 Rule 11(a) and (d) of the Code of Civil Procedure, 1908 on various grounds raised in the said application, however in view of the respondents having agreed for remand of the proceedings before the learned trial judge, this court did not go into the correctness of the said order dated 22<sup>nd</sup> February, 2018 conclusively in this order.

9. By consent of parties, order dated 22<sup>nd</sup> February, 2018 passed by the 3<sup>rd</sup> Joint Civil Judge, Junior Division Pimpri is set aside.

10. The application filed by the applicants under Order 7 Rule 11(a) and (d) of the Code of Civil Procedure, 1908 (Ex.37) is restored to file before the learned trial judge.

11. The said application shall be decided afresh by the learned trial judge without being influenced by the observations made and conclusions drawn in the impugned order dated 22<sup>nd</sup> February, 2018.

12. The learned trial judge shall also consider the documents produced by the applicants alongwith the list of documents dated 3<sup>rd</sup> August, 2017 while hearing the said application under Order 7 Rule 11(a) and (d) of the Code of Civil Procedure, 1908 and shall pass a fresh order in accordance with law.

13. Civil revision application is made absolute in the aforesaid terms. No order as to costs.

14. The application filed by the applicants shall be decided expeditiously by the learned trial judge. None of the parties shall seek any adjournment before the learned trial judge.

15. Both the parties will be at liberty to file additional documents if required with leave of the learned trial judge.

**[R.D. DHANUKA, J.]**