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

CIVIL REVISION APPLICATION NO. 569 OF 2017

Hirabai Dharmraj Maru & Ors.	...Petitioners
vs	
Shri. Nagsen Khanduji More & Ors.	...Respondents

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Mr Ketan Joshi a/w Sandip D. Shinde i/b ERGO Juris for the
Petitioners.

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**CORAM : B.P.COLABAWALLA, J.
NOVEMBER 28, 2018.**

P.C. :

This Civil Revision Application has been filed seeking to challenge the Judgment and Order dated 20th February, 2017 passed by 10th Joint Civil Judge, Junior Division, Nashik in Regular Civil Suit No. 199 of 2016. By this order the Trial Court was pleased to reject the application filed by the petitioners under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short "CPC"). The application filed before the Trial Court under Order VII Rule 11 of the CPC was that the plaint ought to be rejected as it does not disclose any cause of action and is barred by law on the ground that the plaintiffs were seeking a declaration on the basis of adverse possession. It was the case of the petitioners that the declaration of ownership on the basis of adverse possession cannot be sought for by the plaintiffs. The claim of ownership by adverse possession can be made only by way of a defence by the defendant in a proceeding against him. It was, therefore, submitted that the suit was barred by law as contemplated

under Order VII Rule 11 of the CPC and the same, therefore, ought to be rejected.

2 This application came to be rejected by the Trial Court vide its order dated 20th February, 2017 and which is the subject matter of challenge in the present Civil Revision Application.

3 The learned advocate appearing on behalf of the plaintiffs took me through the plaint to try and establish that the suit was clearly barred by law (in the present case being the decision of the Supreme Court in the case of **Gurdwara Sahib Vs. Gram Panchayat Village Sirthala [(2014) 1 Supreme Court Cases, 669]**). He submitted that the suit, if read as a whole, would clearly establish that the Plaintiffs seek a declaration on the basis of adverse possession.

4 I am unable to agree with this submission. On going through the plaint, it is quite clear that the Plaintiffs are not asking for any declaration of ownership by virtue of adverse possession. It is the case of the Plaintiffs that they are in possession of the suit land for more than 60 years, and therefore, seek a declaration to protect their possession. *Prima facie* it does not appear that the suit, as framed, is one by which the Plaintiffs are claiming ownership by virtue of adverse possession. This being the case, at least *prima facie* it would not to be barred as held by the Supreme Court in its decision of **Gurdwara Sahib** (supra). In fact, even the Trial Court, has on examination of the documents filed by the Plaintiffs come to a *prima facie* finding that they are in possession. I, therefore, do not think that the Trial Court was in error in rejecting the application filed by

the petitioners herein (the defendants before the Trial Court) under Order VII Rule 11 of the CPC. It is now trite law that an application under Order VII Rule 11 of the CPC is to be decided on the basis of the averments in the plaint. As mentioned earlier no declaration of ownership is sought by the plaintiffs in the suit on the basis that they are in adverse possession. This being the case, I find no merit in this Civil Revision Application. It is accordingly dismissed. No order as to costs.

5 It is made clear that the findings given herein by me as well as by the Trial Court are only *prima facie* and will not influence the Trial Court on any issue raised by the defendants at the trial of the suit.

(B.P.COLABAWALLA, J.)