

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****CIVIL REVISION APPLICATION NO. 783 OF 2015****Dattu Shivram Gaikar****since deceased through legal heirs****..... Applicants****VERSUS****Sou.Maltibai Lalsing Pardeshi & Anr.****..... Respondents**

Ms.Gauri Godse, a/w. Mr.Rohit Joshi for the Applicants.

Mr.Dattatraya Godbole for the Respondent no. 1.

CORAM : R.D. DHANUKA, J.**DATE : 3rd SEPTEMBER, 2018****P.C.**

By this civil revision application filed under section 115 of the Code of Civil Procedure, 1908, the applicants (original defendants) have impugned the order dated 17th July, 2015 passed by the learned trial judge dismissing the application filed by the petitioners under Order 7 Rule 11(a) and (d). It was the case of the petitioners that the substantial part of the suit property has been already acquired and since some of the provisions of the agreement entered into between the parties and more particularly clause 11 are impossible to be performed, no specific performance even otherwise is not possible in favour of the original plaintiffs.

2. The impugned order was passed by the trial court on 17th July, 2015. Suit is of the year 1988. The issues are likely to be framed any moment.

3. The learned trial judge has rejected the said application on various grounds including on the ground that the subject suit plot is a larger plot whereas part of the property was acquired and thus suit for specific performance may not be rejected on that ground.

4. I do not find any infirmity in the order passed by the learned trial judge in rejecting the application filed by the petitioners under Order 7 Rule 11(a) and (d) of the Code of Civil Procedure, 1908.

5. The parties are directed to proceed with the trial after framing of issues.

6. There is no merit in this civil revision application and same is accordingly dismissed. No order as to costs.

7. It is made clear that the grounds raised by the petitioners that in view of clause 11 of the agreement entered into between the parties, the specific performance cannot be granted is concerned, the said ground is kept open and shall be considered by the learned trial judge on its own merits at the time of trial.

[R.D. DHANUKA, J.]