

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

CIVIL REVISION APPLICATION NO. 29 OF 2018

Devidas Bhavsingh Gangurde

... Applicant
(Ori.Defendant)

Versus

Jayram Karma Kokani

... Respondent
(Ori.Plaintiff)

....

Mr. R. S. Wani, Advocate for applicant.

Mr. M. L. Dharashive, Advocate for respondent.

....

CORAM : M. S. KARNIK, J.

DATED : 5th AUGUST, 2019

PER COURT :-

1. Heard learned counsel for the applicant and learned counsel for the respondent.
2. The plaintiff had filed the suit for setting aside the mutation entry and for declaration of ownership in respect of the suit property bearing Gat No.48/1, admeasuring 2 H 82 R.
3. The plaintiff claimed that Hiranman Poslya Kokani had three daughters. The plaintiff's mother – Chandrabai Karma Kokani is one of the daughter of Hiranman. Hiranman partitioned his properties in between his three daughters. Gut No.48/1 admeasuring 2 H. 82 R came to the share of Chandrabai.

4. It is the case of the plaintiff that the plaintiff is cultivating the suit property as legal heir of Chandrabai and as an owner. The suit property was sold by the plaintiff's mother to the defendant.

5. The defendant filed written statement contending that Chandrabai is the absolute owner of the suit property and she has every right to deal with the same. It was further contended by the defendant that Hiranman has partitioned the suit property between his three daughters. Chandrabai was given one share to the extent of Gut No.48/1 admeasuring 2 H. 82 R and therefore Chandrabai became the absolute owner. The plaintiff has no right in the suit property.

6. After the matter was posted for cross examination of the plaintiff, the defendant moved an application under Order VII Rule 11(a) of the Code of Civil Procedure, stating that the suit does not disclose any cause of action as during the life time of the plaintiff's mother, the plaintiff cannot claim share in the suit property. The defendant further contended that the suit of the plaintiff for declaration of ownership over the suit property is premature during the lifetime of Chandrabai.

7. Learned counsel for the petitioner-original defendant relied upon the decision of the Hon'ble Apex Court in the case of Saleem Bhai and others Vs. State of Maharashtra and others reported in (2003) 1 SCC 557, especially para 9, where it is held that the trial court can exercise the power under Order VII Rule 11 CPC at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. Further it is observed that while deciding the application, the averments in the plaint are germane; the

pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

8. I have gone through the averments made in the plaint. No doubt, the plaintiff has contended that he is the son of Chandrabai, who has received one share in partition of the suit properties. There are further averments, that the plaintiff being the legal heir of Chandrabai is cultivating the land as owner of the suit property.

9. As stated earlier, the issues have already framed and the recording of evidence has concluded. In my opinion, considering the averments made in the plaint and the relief sought by the plaintiff, I do not see any reason to hold the view of the trial court rejecting the application under Order VII Rule 11 of CPC as unwarranted. I am not inclined to interfere with the order impugned. The Civil Revision Application is therefore, rejected.

[M. S. KARNIK, J.]

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