

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

902 CIVIL REVISION APPLICATION NO.203 OF 2018

JYOTI SANDIP KHEDKAR AND OTHERS .. Petitioners
VERSUS
JAGANNATH THAKU PALWE AND OTHERS ..Respondents

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Advocate for Petitioners : Shri Vijay B Jagtap
Advocate for Respondents No.1 to 3 : Shri Z.M. Pathan

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**CORAM : P.R. BORA, J.
Dated: June 11, 2019**

PER COURT :-

1. With consent of the learned Counsel for the parties,
Civil Revision Application is heard finally.

2. By filing the present application, the petitioners have
questioned the order dated 30.08.2018 passed by Joint Civil
Judge, Senior Division at Newasa (hereinafter referred to as the
'Trial Court') below an application at Exh.134.

3. The aforesaid application was filed by the present
petitioners invoking the provisions under Order-7, Rule-11 (a) &
(d) of the Code of Civil Procedure (in short 'CPC') praying for
rejection of the plaint on the grounds mentioned in the said
application.

4. It was the contention of the petitioners that, the decree passed in Regular Civil Suit No.160 of 1993 could not have been sought to be set aside by the respondents i.e. defendants in R.C.S. No.21 of 2002 on the ground that, the said consent decree was obtained by fraud. The application was, therefore, filed by them for rejection of the plaint in Regular Civil Suit No.21 of 2002 under Order-7, Rule-11 (a) & (d) of the CPC. The application was opposed by the present respondents. The learned Trial Court vide the impugned order has rejected the said application. Aggrieved by, the petitioners have preferred the present revision application.

5. I have given due consideration to the submissions made by the learned Counsel appearing for the parties. I have perused the impugned order and the other material placed on record. Perusal of the impugned order and the said material, it does not appear to me that, any apparent mistake is committed by the Trial Court in rejecting the application filed by the present petitioners. Law is well settled that, when the provisions under Order-7, Rule-11 of the CPC are invoked, what is to be

considered by the Court are the averments in the plaint and not the averments raised or the objections raised in the written statement filed by the defendants.

6. On perusal of the plaint in Regular Civil Suit No.21 of 2002, it is revealed that, the said suit is filed for declaration and injunction. The plaintiff in the said civil suit has claimed $\frac{1}{2}$ share in the property, which is the subject matter of the said suit. It is true that, one of the prayer in the said suit is to set aside the decree passed in Regular Civil Suit No.160 of 1993 and it is also the contention that, the said decree was obtained by fraud. It is, thus, evident that, the said suit is not based on the relevant claim in the said civil suit is not only on the ground that, the decree passed in RCS No.160 of 1993 is obtained by fraud and is, therefore, liable to be set aside. The other issues raised in the matter will have to be decided by giving due opportunity to the parties to the said suit. Moreover, it is brought to my notice that, the application under Order-7, Rule-11 of the CPC has been filed belatedly. Civil suit was admittedly filed in the year 2002 and the application came to be filed in the year 2018 i.e. after long lapse of 16 years. It is further significant to note that, the

defendants in the said civil suit, who are the petitioners in the present petition, have filed their written statement in the said matter and the suit has also been proceeded further. Not only the plaintiffs, but the defendants also have adduced their evidence and the plaintiffs and the defendants both have filed the pursis closing their oral evidence. The application under Order-7, Rule-11 of CPC came to be filed, when the matter was fixed for advancement of final arguments. Though there is no bar of limitation for filing the application under Order-7, Rule-11 of the CPC, propriety demands that, such an application has to be filed within the reasonable period. In the present matter, I reiterate that, such an application came to be filed after long lapse of 16 years. In the circumstances, even on that count, the application was liable to be rejected.

7. Secondly, as I noted herein above, the decree obtained by fraud is not the only ground raised in the said suit. As such, it does not appear to me that, the Trial Court has committed any error in rejecting the application.

8. The Civil Revision Application being devoid of any substance deserves to be dismissed and is accordingly dismissed.

(P.R. BORA, J.)