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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.269 OF 2018

Devendra Dhanaji Mandavkar ..Applicant.

V/s.

Sunanda Dhanaji Umbarkar & Ors. ..Respondents.

Mr.Mahesh V.Rawool for the applicant.

None for the respondents.

CORAM : M.S.SONAK, J.

DATE : APRIL 12, 2019

P.C.:-

Heard Mr.Rawool, learned counsel for the applicant.

2. Challenge in the revision application is to the order dated January 1, 2018 by which learned trial Judge has rejected the applicant's application under Order 7 Rule 11(d) of the Code of Civil Procedure ('the CPC' for short).

3. Learned counsel for the applicant submits that the respondent-plaintiff has no sons and consequently no co-parceners. He submits that Punaji died in the year 1982 and, therefore, at the time of institution of suit, the respondent-plaintiff had no right as a co-parcener in the suit property. He submits that the respondent-plaintiff also could have claimed effect of the amendments to the Hindu Succession Act,

1956 since such amendment came into force only in the year 2005 and such amendment have not been given retrospective effect. On these grounds, the learned counsel submits that the plaint was required to be rejected.

4. Learned trial Judge has considered each contention and rejected the same on the ground that the plaint cannot be rejected on such basis. Learned trial Judge is quite right, because, the grounds now raised relate to the merits of the matter and such grounds if allowed, may result in the dismissal of the suit. However, these are not the grounds for rejection of the plaint. At this stage, the validity of the grounds on merits are not required to be considered. Such grounds are required to be considered along with other issues which arise in the suit and dispose of when the trial is completed.

5. For the aforesaid reasons, there is no jurisdictional error in the impugned order. The revision application is dismissed. There shall be no order as to costs.

6. However, it is made clear that all contentions of the applicant on the merits are kept open to be determined at the trial of the suit.

7. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)