

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.608 OF 2016

Abhijit Vasant Kunte ...Applicant
vs.
Nalini Charudatta Bhalerao and Ors. ...Respondents

Mr. Ashutosh Kulkarni, for the Applicant
Mr. Umardkar I/b. Mr. Kedar Patil, for Respondent No. 1.

CORAM : M. S. SONAK, J.

DATE : APRIL 16, 2019

P.C.:

- . Heard Mr. Kulkarni, learned counsel for the Applicant.
2. The challenge in this Civil Revision Application is to the order dated 15th June, 2016 by which the learned trial Judge has rejected the Applicant's application under Order VII Rule 11 of Code of Civil Procedure (CPC), as also under Section 151 of CPC seeking for rejection of the Plaint.
3. Mr. Kulkarni submits that in terms of the decision of the Hon'ble Supreme Court in ***Prakash vs. Phulwati, Civil Appeal No. 7217 of 2013, (2016) 2 SCC 36*** the Hon'ble Supreme Court has held that only the daughters who are alive as on 20th December, 2004 and whose father also alive on the said date are entitled to benefits of amendment to Section 6 of the Hindu

Succession Act. He submits that the father of the Plaintiff died on 3rd June, 2004 and was not alive on 20th December, 2014 and therefore Plaintiff is not entitled to benefit of the amendment to section 6 of the Hindu Succession Act. He submits that on this ground, the Plaint was required to be rejected either by resort to provision of Order VII Rule 11(d) or section 151 of CPC.

4. According to me, the ground which is raised by the Applicant is not a ground sufficient to reject the Plaint by resort to provision to Order VII Rule 11 or Section 151 of CPC. There is distinction between rejection of the Plaint and dismissal of suit on merits. The ground urged by the Applicant relates to the later aspect and not to former aspect.

5. Besides, as was noticed by this Court in Order dated 25th January, 2019, from the conflicting decisions of the Hon'ble Supreme Court upon the issue, the conflict between the view taken in ***Phulavati*** (supra) and ***Danamma @ Suman Surpur and Anr. vs. Amar and Others, (2018) 3 Supreme Court Cases 343*** and ***Mangammal vs. T.B. Raju, (2015) SCC Online 422*** has been noticed by the Hon'ble Supreme Court itself and the reference has been made to the higher bench.

6. According to me, this is not a case where the suit has

instituted by the Plaintiff, can be said to be *ex-facie* barred under any law on the basis of any statement in the Plaint itself. As noted earlier, the contention raised by the Applicant at the highest, will go to the merits of the suit. The contention now raised by the Applicant, in the nature of Applicant's defence to the suit. It is well settled that at the stage of considering of application under Order VII Rule 11 of CPC, the defence which the Defendant may raise is quite irrelevant. In order to exercise the powers under Order VII Rule 11 (d) of CPC, the Court is required to focus only upon the Plaint and the averments in the Plaint. Though there is no bar taking out the application under Order VII Rule 11 at any stage it is necessary to note that the present Application was taken when the evidence was at the advanced stage.

7. For all the aforesaid reasons, this Civil Revision Application is dismissed.

8. There shall be no order as to costs.

9. However, it is clarified that the contention of the Applicant as well as the response of the Respondents to such contention are issues which will have to be decided by the learned trial Court along with all the other issues which arise in the suit. Therefore, none of the observations in the impugned order or for

that matter in the present order need influence the trial Judge whilst deciding the such issue on their own merits and in accordance with law. It is therefore, made clear that the observations are only in the context of deciding whether any case is made out by resort to Order VII Rule 11 or Section 151 of CPC.

10. All contentions of all parties on merits are kept open.

(M. S. SONAK, J.)