

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION (ST) NO. 31068 OF 2018

WITH

CIVIL APPLICATION NO. 7 OF 2019

Ravindra B. Raikar and ors. .. Applicants
vs.
Prabhavatibai S. Satav and ors. .. Respondents

None for the parties.

CORAM : M. S. SONAK, J.

DATE : 16 APRIL 2019.

P.C. :-

- 1] None for the applicants.
- 2] There is a delay of 71 days in instituting this Civil Revision Application.
- 3] The Civil Revision Application challenges the order dated 16th March 2018 dismissing the applicants' application under Order 7 Rule 11 of the CPC.
- 4] From perusal of the impugned order, as well as the memo of revision petition, it is clear that there is no merit in the contentions raised in the Civil Revision Application.
- 5] The applicants had applied for rejection of the plaint on the ground that the plaintiff's father died in the year 1964 and therefore, the plaintiff was not entitled to benefit of amendments made to the Hindu Succession Act, 1966 in the year 1994 and 2005.

6] In the first place, the aforesaid contention is a contention which goes to the merits of the matter. If such contention is to be upheld, then, at the highest, the suit will have to be dismissed. However, this is not a good ground to seek rejection of the plaint.

7] Secondly, in any case, as observed by learned Trial Judge, the situation as aforesaid might arise only if it is established that the properties are coparcener properties. In the present case, it is the contention of the plaintiff that the properties belong to the deceased father of the plaintiff. All this means that the suit will have to go to trial and this is not a fit case for rejection of the plaint by resort to the provisions under Order 7 Rule 11 of CPC. There is really no jurisdictional error in the view taken by learned Trial Judge.

8] Therefore, Civil Application as well as Civil Revision Application are hereby dismissed.

(M. S. SONAK, J.)