

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

CIVIL REVISION APPLICATION NO. 3 OF 2020

Vijaykumar Ratanlal Patni and Others

..APPLICANTS

VERSUS

Santosh Ratanlal Patni

(Deceased) Through L.Rs.

Pushpabai Santosh Patni and Others

..RESPONDENTS

Mr. P.P. Patni, Advocate for applicants

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CORAM : R.G. AVACHAT, J.

DATED : 09th MARCH, 2021

PER COURT :

1. Heard.

2. The applicants have challenged the order dated 18th September, 2019 rejecting their application (Exhibit 68) in Special Civil Suit No. 309 of 2015 for rejection of plaint.

3. Perused the plaint. It is a suit for partition and separate possession of the joint family properties. It is the case of the applicants that partition of the joint family properties has already been effected between the father of the deceased plaintiff, Defendant No.1 and father of Defendant No.3 in January 1954. The applicants relied on a decree of partition passed in

Regular Civil Suit No. 79/53-54. It needs no mention that for rejection of the plaint, averments in the plaint have only to be looked into. Reading of the plaint indicates that the suit has been properly framed. Rejection of the plaint is sought on the ground of partition having been effected before the plaintiff in the suit was born. It is a matter of evidence. It cannot be looked into for prayer of rejection of the plaint. Thus, there is no merit in the civil revision application. Same is dismissed.

4. The applicant is at liberty to move the trial Court for framing of preliminary issue as regards maintainability of the suit. It needs no mention that the trial Court would decide the same on its own merits.

(R.G. AVACHAT, J.)

SSD