

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 109 OF 2021

Mrs.Anjana Sudhakar Raokhande & Anr. ...Applicants
vs.
Mrs.Ratnamala Shahaji Raokhande & Ors. ...Respondents
Mr.Niranjan Kandade for Applicants.

CORAM : BHARATI DANGRE, J.

DATED : 28 SEPTEMBER 2021

PC. :

. Heard learned Counsel for the Applicants.

2. The civil revision application assails an order dated 4 March 2021 passed by Civil Judge, Senior Division, Vashi on an application filed by Defendant Nos.1 and 2 by invoking the provisions of Order 7 Rule 11 read with 151 of CPC.

3. As far as the provision for rejection of plaint is concerned, it is only subjected to the stipulations contemplated in Rule 11, the plaint can be rejected. While moving an application, defendant nos.1 and 2 had sought recourse to clause (d) of Rule 11, which permits the plaint to be rejected where the suit appears from the statement in the plaint to be barred by any law. The application preferred by defendant nos.1 and 2 proceeds on the footing that the suit property is in the name of defendant No.1 and she is a sole owner of the same. Relying upon Section 14 of the Hindu Succession Act which adumbrates that a property of a female Hindu

shall be her absolute property, a plea has been raised, that the plaintiff has no right to claim partition and seek a declaration regarding the said property.

4. When the plaint, instituted by the plaintiff, who is a daughter-in-law of defendant no.1, along with her minor three children, is perused, it is apparent that the business was shared by defendant No.1 with plaintiff no.1. The plaint specifically averred that her husband was equal participant in the business of a chappal shop and even plaintiff no.1 had contributed. A specific plea has been raised to that effect that defendant no.1 had purchased the suit property from hard earned income who was already in the business. When the plaintiff came to know that defendant no.1 is getting the suit property transferred in the name of defendant no.2, by raising a plea that defendant no.1 does not possess any right to assign the right exclusively in favour of defendant No.2, the suit has been instituted. It is worth to note that what the plaintiff has claimed is 50% ownership right and it is specifically pleaded that since defendant no.1 was also active partner in the business, she is entitled for 50% share of the suit property.

In the backdrop of the aforesaid facts brought on record, the learned Judge has rightly recorded that an opportunity is required to be given to the plaintiff to show the source of income, out of which the property has been purchased, and the claim that defendant no.1 is an absolute owner of the entire property being a Hindu female, will have to be determined in the suit and the bar in instituting the plaint, as sought to be claimed on the basis of Section 14 of the Hindu Succession Act, cannot be pleaded as a ground for rejecting the plaint. I see no illegality or infirmity in the impugned order, which is assailed in the present writ petition. Necessarily

by upholding the said impugned order, the civil revision application deserves to be rejected.

5. At this stage, learned Counsel also argued that the plaint is also barred by invoking the provisions of benami transaction. The said submission deserves to be overturned on the very simple ground that this was not a ground raised at the time when the application for rejection of the plaint was presented.

6. The civil revision application is rejected.

(SMT. BHARATI DANGRE, J.)