

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

943 CRA NO.48 OF 2022

SHRIKRUSHNA DATTATRYA BAJPAI AND ANOTHER  
VERSUS  
SURYAKANT D BAJPAI ALIAS SURYAKANT P KADAM (DIED) THRLRS  
PREMA S BAJPAI (KADAM)AND ORS

...  
Advocate for Petitioners : Mrs. Dube Anjali (Bajpai)

CORAM : MANGESH S. PATIL, J.  
DATE : 05.04.2022.

PER COURT :

This is a revision under Section 115 of the Code of Civil Procedure by the original defendants who are aggrieved and dissatisfied by the rejection of their application preferred under Order VII Rule 11 of the Code of Civil Procedure praying for rejection of the plaint on various grounds.

2. I have heard the learned advocate Mrs. Dube (Bajpai) and perused the order and the papers. The respondent claiming to be in exclusive possession of the suit property filed a suit for perpetual injunction simplicitor.

3. The revision petitioners contested the suit *inter alia* on the ground that he has no right, title or interest in the suit property which is their ancestral property. He is their uterine brother and cannot claim any right or share in it and still he is trying to defend his so called exclusive possession. He had also filed Regular Civil Suit No. 231/2017 earlier and the present suit is barred by Order II Rule 2 of the Code of Civil Procedure.

4. It was also agitated that in view of the decision in the case of **Ananthula Sudhakar Vs. Sudhakar P. Buchi Reddy; (2008) 4 Supreme Court Cases 594**, he ought to have claimed declaration as to his title. It was therefore, agitated that the plaint was liable to be rejected.

5. True it is that the petitioners are coming with very many defences including the right of the respondent to file the suit. It is also being agitated that he is their uterine brother and that there is a bar under Order II Rule 2 of the Code of Civil Procedure inasmuch as the relief that is being claimed was also available when he had instituted the suit at earlier point of time. It is also equally true that in view of the stand being taken by the petitioners in the written statement, the title of the respondent over the suit property is also under cloud and therefore in the light of **Ananthula Sudhakar** (supra), irrespective of the fact that the suit is simplicitor for injunction the issue as to the title also will have to be framed and gone into and decided.

6. However, it is pertinent to note that all the aforementioned disputed questions are mixed questions of facts and law and it is not proper to allow such issues to be gone into and decided at this preliminary stage. It would be appropriate that all such disputed questions are formulated in the form of issues and decided by extending an opportunity to both the sides to lead evidence, which can happen only at a full fledged trial.

7. In my considered view this is not an appropriate stage and proceeding wherein all these questions can be answered in a halfhazard manner.

8. The revision is dismissed, however, keeping open all the issues raised by way of application preferred by the petitioners under Order VII Rule 11 of the Code of Civil Procedure to be decided at the trial.

**(MANGESH S. PATIL, J.)**

mkd/-