

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

CIVIL REVISION APPLICATION 192 OF 2022

Shri Dilip Chandrakant Pathare & Ors.

...Applicants

vs.

Uttam Sukharaj Hargude & Ors.

...Respondents

Mr.Prathamesh B. Bhargude with Sumit Sonare for Applicants.

Mr.Atul G. Damle, Senior Advocate i/b. Chetan R. Nagare for Respondents.

CORAM : ROHIT B. DEO, J.

DATED : 1 JULY 2022

P.C. :

1. This petition emanates from Regular Civil Suit 817/2020 which is brought for decree of partition and certain consequential relief.

2. The defendants 1, 3, 4, 6, 8, 9 and 12 and 13 preferred an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (Code) seeking rejection of plaint on the premise that the suit is barred by the provisions of law.

3. In brief, the said defendants contended that a holistic reading of the plaint, it appears that the plaintiffs are claiming through the deceased Sonabai Rangnath Pathare, who expired in 1979. According to the defendants, Sonabai's husband, Rangnath Pathare, expired on 16 June 1937 and as the position of law then stood, Sonabai inherited a limited estate, and not share or interest in the coparcenary property.

4. The learned trial Judge has rejected the application after

considering the provisions of several decisions which have been rendered on the touchstone of Section 14(1) of the Hindu Succession Act and has concluded that the plaintiffs are entitled to share in the coparcenary property by virtue of the provisions of Sections 14 and 15 of the Hindu Succession Act, 1956, and therefore, the cause of action is not illusory. In the concluding paragraph of the order, which rejects the application under Order 7 Rule 11, it is observed that the plaintiffs have shown that they have pre-existing right to file the suit for partition.

5. In my considered view, it would be appropriate to leave the question raised in the application under Order 7 Rule 11 open for the learned trial court to adjudicate at the stage of final hearing of the suit.

6. In any event, what is observed by the learned trial court is that the plaintiffs have demonstrated “prima facie pre-existing right” and in view of the said observation, it appears that even the trial court has kept the question open.

7. Both the learned Counsel have no objection if the question/s raised in the application under Order 7 Rule 11 of the Code is/are kept open for adjudication at the stage of final hearing.

8. The petition is disposed of.

(ROHIT B. DEO, J.)