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

CIVIL REVISION APPLICATION 312 OF 2022

Late Appa Gopa Memane (deceased)
through LR. :

1a. Mr. Gulap Appa Memane & Ors. ... Applicants.

Versus

Shri Sanjay Tatyaba Memane & Ors. ... Respondents.

Mr. Sumit V.Khaire, Advocate for the Applicants.

CORAM : ROHIT B. DEO, J.

DATE : JULY 04, 2022

P.C. :-

1. The Plaintiffs are the Defendants in Regular Civil Suit 35 of 2019 which is instituted by the Respondents for partition.

2. The Defendants preferred an Application, seeking rejection of the plaint on the premise that the predecessor of the Plaintiffs instituted Regular Civil Suit 213 of 1990 which is decided on 18.12.2000 and then Regular Civil Suit 165 of 2001 was also preferred by some members of the family which is also decided.

3. In essence, the Application under Order 7 Rule 11 seeks to invoke the provisions of Section 11 of the Civil Procedure Code 1908 (Code) and Order 2 Rule 2, although according to the learned counsel for the Petitioner, the rejection of the plaint is sought on the ground of absence of cause of action.

4. It is trite law that while considering the Application under Order 7 Rule 11 of the Code, the Court is required to confine the consideration to the averments in the plaint and the documents which are deemed to be part of the plaint.

5. The issue which is raised would require the learned trial Court to look into the pleadings and the decisions in the previously instituted suits, which is not an exercise permissible. Suffice it to refer to the decision of the Hon'ble Apex Court in the case of **Srihari Hanumandas Totala vs. Hemant Vithal Kamat** - (2021) 9 Supreme Court Cases 99) which articulates that the issues akin to res-judicata etc., which would call for an enquiry beyond the suit plaint, cannot be considered at the stage of hearing of Application under Order 7, Rule 11 since all that can be looked into is the plaint and the documents which are deemed to be part of the plaint.

6. I see no error in the view taken by the learned trial Court while rejecting the Application under Order 7 Rule 11. Needless to observe that all the contentions are left open for the Defendants to agitate at the appropriate stage.

7. The Petition is dismissed.

(ROHIT B. DEO, J.)

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