

SPChauhan

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

CIVIL REVISION APPLICATION NO. 96 OF 2022

Rachappa Kalappa Yenulge and others	... Applicants
Versus	
Ashok Mahadeorao Dongare and others	... Respondents

....
Mr. N.K. Tungar – Advocate for Applicants
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CORAM : GAURI GODSE, J.
DATE : 11th January, 2023

PER COURT :

1. This application is filed by the original plaintiff for challenging the rejection of his application under Order VII Rule 11 of Code of Civil Procedure Code, 1908.
2. Learned counsel appearing for the applicants submit that the suit is barred on the basis of the pleadings made by the respondent in the plaint. Perusal of the application made under Order VII Rule 11 of Code of Civil Procedure, do not specify as to the plaint is barred under which law. The trial Court has dismissed the application by holding that the suit for perpetual injunction would be maintainable and that only at the time of trial, it has to be seen whether the plaintiff would have got the right or title over the suit property and whether there was any right or title of

the suit property. Thus, the application of the applicants is rejected on the ground that in an application under Order VII Rule 11 of Code of Civil Procedure, this issue cannot be decided.

3. I have carefully perused the plaint as well as the application filed by the applicants under Order VII Rule 11 of Code of Civil Procedure. There is no specific ground raised as to, under which provision of law the suit is barred. The argument on behalf of applicants is that the suit simplicitor for injunction would not be maintainable as held by the Hon'ble Supreme Court in the case of *Rajendra Bajoria Versus Hemant Kumar Jain*, reported in **(2021) ALL SCR 2057**.

4. In my view, the learned trial Court is right in rejecting the application under Order VII Rule 11 of Code of Civil Procedure. The issue in the present case as to whether the suit simplicitor for injunction can be decreed or not is a question that will have to be decided at the time of trial. The suit cannot be rejected at the threshold on the said ground. Hence, the decision of Hon'ble Supreme Court relied upon by the applicants is of no assistance to the applicants' case. There cannot be any debate on the power conferred on the Court under Order VII Rule 11 of the

Code of Civil Procedure, to terminate a civil action by scrutinizing the averments in the plaint and the supporting documents relied in the plaint. However, rejecting a civil suit is a drastic action, hence, the conditions enumerated under Order 11 Rule 7 of Code of Civil Procedure, are required to be strictly adhered to.

5. All the submissions made on behalf of the applicants are questions to be decided on evidence at the time of trial of the suit and the same cannot be made subject matter of an application under Order VII Rule 11 of the Code of Civil Procedure. There is no infirmity and illegality found in the impugned order. There is no merit in the Civil Revision Application, hence, the same is dismissed.
6. Needless to record that in the event issue raised in the application under Order VII Rule 11 of Code of Civil Procedure, arise at the time of framing issues, the same would be framed in accordance with law and decided on its own merits in accordance with law.

[GAURI GODSE]
JUDGE