

AGK

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

WRIT PETITION NO.5590 OF 2023

Rau Tayappa Bhosale, deceased
through LRs & Anr. ... Petitioners

V/s.

Dattatraya Devappa Bhosale, deceased
through LRs & Ors. ... Respondents

Mr. Kuldeep U. Nikam for the petitioners.

Mr. Tejas Deshmukh for respondent Nos.1.1 to 1.6, 2.1
to 2.3 and 3 to 92.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 18, 2023

P.C.:

1. By the impugned order, the Trial Court has framed preliminary issue in relation to the application filed by the defendant purportedly under Order 7 Rule 11 of the Code of Civil Procedure, 1908.

2. It is well settled that application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 needs to be decided based on averments in the plaint and documents annexed along with the plaint. For the purpose of decision on an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 framing of issues is not necessary. Hence, following order:

3. The impugned order is quashed and set aside.
4. The Trial Court is directed to decide the application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 based on averments in the plaint and documents annexed along with the plaint.
5. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)