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

CIVIL REVISION APPLICATION NO.123 OF 2023

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... Applicant

V/s.

Mahesh Devidas Sathe & Ors.

... Respondents

Mr. Atul Damle, Senior Advocate i/by Mr. Ajay A. Joshi
for the applicant.

Mr. G.N. Salunke i/by Mr. Umesh Kurund for
respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 30, 2023

P.C.:

1. The challenge in this civil revision application is to the order dated 7 January 2023 rejecting application of defendants under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908 ("CPC", for short).

2. The respondents/plaintiffs sought relief of declaration of ownership over the suit property. Moreover, relief of declaration of action of conversion of the suit property into non-agricultural use is also challenged. Consequential relief of injunction not to disturb the possession of the plaintiff over the suit property is also sought. In such a suit, the applicant filed an application purportedly under Order 7 Rule 11(a), (b) and (d), CPC.

3. On perusal of the plaint and material on record, it appears that though the plaintiff in his suit has stated that in the year 1996-1997 by Mutation Entry No.4948, Gat No.103/1 was shown as Gat No.103/2B/2B/2; however, in paragraph 8 the plaintiff avers that he got knowledge of the illegal activities of the defendant only on 20 February 2013.

4. It needs to be noted that initially respondent filed Regular Civil Suit No.11 of 2013 which came to be withdrawn in view of order in Special Leave Petition (C) No.7064 of 2021. The Apex Court while permitting the respondent to withdraw the suit, granted him permission to file appropriate fresh suit. In furtherance of such liberty, present suit is filed. Therefore, in my opinion on consideration of the plaint and the documents annexed along with the plaint, no case for rejection of plaint under Order 7 Rule 11(d), CPC is made out.

5. At this stage, learned senior advocate for the applicant submitted that the principle contention raised before the Apex Court was absence of declaration of invalidity of the sale deed of the applicant. However, while considering application under Order 7 Rule 11, CPC, such contention would not be within its purview. It shall be open for the applicant to raise such contentions as is permissible in law at an appropriate stage of the suit.

6. Another ground raised in the application was non-payment of requisite court fee. As per clause (b) of Order 7 Rule 11, CPC, unless the court passes an order directing a party to pay the court fee. It is only after non-compliance of such direction, clause (b) of

Order 7 Rule 11, CPC is attracted. Therefore, this contention is of no consequence in the present civil revision application.

7. In view of the aforesaid reasons, there is no merit in the civil revision application. The civil revision application stands dismissed. No costs.

(AMIT BORKAR, J.)