

AGK

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

CIVIL REVISION APPLICATION NO.624 OF 2023

Sumedh Deepak Adsul & Anr.

... Applicants

V/s.

Vishal Vilas Randive & Ors.

... Respondents

Digitally
signed by
ATUL
GANESH
KULKARNI
Date:
2023.10.26
14:40:36
+0530

Mr. Sarthak Bhatia with Ms. Arushi Vyas (through V.C.)
i/by Mr. Kishor Ajetao for the applicants.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 26, 2023

PC.:

1. By this civil revision application under Section 115 of the Code of Civil Procedure, 1908, the applicants/original defendants are challenging order passed by the Trial Court rejecting application filed under Order 7 Rule 11(a) and (d) of the Code of Civil Procedure, 1908.

2. The respondents filed Special Civil Suit No.807 of 2020 seeking reliefs of partition, declaration and possession of the suit property. In the said suit, the applicants filed an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908. According to the applicants, the plaintiffs had no cause of action to file the suit and the suit was not maintainable for want of notice under Section 164 of the Maharashtra Cooperative Societies Act, 1960.

3. The Trial Court rejected the application. The applicants, therefore, filed present civil revision application.

4. On perusal of the plaint, it appears that the plaintiffs have averred in the plaint that the suit properties are their ancestral properties initially owned by one Vishnu Malhar Randive. As per the chronology mentioned in the plaint, the plaintiffs are claiming their rights through first wife of Vishnu. Whether the plaintiffs are entitled to get share or not needs to be decided during trial after granting both sides opportunity to lead oral evidence. However, on reading of the plaint, the plaint cannot be rejected on the ground of absence of cause of action.

5. In so far as issuance of notice under Section 164 of the Maharashtra Cooperative Societies Act, 1960 is concerned, it is not clear as to whether the transaction impeached in the suit was in connection with the business of the cooperative society or not. Moreover, the relief in relation to the cooperative society is one of the relief in the plaint. It is well settled that part of the plaint cannot be rejected. Even if the contention of the applicants is accepted that one of the relief is bad for want of notice under Section 164, still remaining prayer survive. Therefore, in my opinion, there is no error of jurisdiction committed by the Trial Court while rejecting the application.

6. There is no merit in the civil revision application. The civil revision application is rejected. No costs.

(AMIT BORKAR, J.)