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

CIVIL REVISION APPLICATION NO.153 OF 2023

WITH

INTERIM APPLICATION NO.2402 OF 2023

IN

CIVIL REVISION APPLICATION NO.153 OF 2023

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PATHAN
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Jayanti Keshav Mhatre & Ors ... Applicants

V/s.

Vasant Anant Choudhary & Ors ... Respondents

Mr. Amey Kulkarni i/by Mr. Mayuresh Lotlikar, for
Applicants.

Ms. Gunjan Shah i/by Mr. Kayval P. Shah, for
Respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 6, 2023

P.C.:

1. The applicants/original defendant No.7 to 10 filed the present civil revision application challenging order passed by the Trial Court rejecting the application under Order 7, Rule 11 of the Code of Civil Procedure, 1908.

2. Respondent No.1 filed Regular Civil Suit No.57 of 1986 seeking injunction as regards suit property being Survey No.23 (old) 35 (new) Hissa No.9 being house No.381 or any portion of the land.

3. During pendency of suit, applicants filed an application under Order 7, Rule 11 of CPC for dismissal of suit for want of cause of action.
4. The Trial Court by the impugned order rejected the application.
5. Aggrieved thereby defendants have filed present civil revision application.
6. Learned Advocate for the applicant submitted that initially, the plaint contains an averment that the suit property is over the Survey No.23 (old) 35 (new) Hissa No.9. However, by way of subsequent pleading under Order 8, Rule 9 of CPC, the plaintiff is seeking relief in respect of Survey No.18 (old) 30 (new) Hissa No.18.
7. On perusal of the plaint, it appears that the reliefs sought by the plaintiff are in respect of open plot of land belonging to plaintiffs and adjacent house of the plaintiffs being house No.381 or any portion of the land belonging to the plaintiff and forming a part and parcel of Survey No.23 (old), 35 (new), Hissa No.9. After granting opportunity of leading oral evidence, the Trial Court is required to decide as to whether plaintiff has made out a case for grant of reliefs prayed in the prayer clauses of the plaint. What is the effect of subsequent pleadings under Order 8, Rule 9 of CPC needs to be considered by the Trial Court at the time of final hearing of the suit. However, at this stage by subsequent pleadings under Order 8, Rule 9 of CPC description of another property is given cannot be a ground to dismiss the plaint on the ground of

non-disclosure of cause of action. The Trial Court, therefore, justified in rejecting the application. There is no error of jurisdiction.

8. The civil revision application is, therefore, rejected. No costs.

9. In view of disposal of civil revision application, all pending interim applications stand disposed of as infructuous.

(AMIT BORKAR, J.)