



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 123 OF 2024

1. Kalpana Mohan Raskar

... APPLICANT

(Ori. Defendant No.1)

VERSUS

1. Sarthak Mohan Raskar (*Minor*)
Through Subhash Ramchandra Memane

2. Gangubai Dagdu Raskar

3. Mitthu Dagadu Raskar

4. Asha Popat Raskar

5. Laxmi Popat Raskar

6. Tatyabhau Rajaram Takle

7. Sanjay Rajaram Takle

... RESPONDENTS

(Resp. No.1 – Ori. Plaintiff No.1 & Resp.
Nos. 2 to 7 – Ori. Defendant Nos.2 to 7)

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Ms. Suvarna M. Zaware – Advocate for Applicant

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CORAM : SANDIPKUMAR C. MORE, J.

DATE : 26th September, 2024

ORDER :

1. Heard learned Counsel for applicant at admission stage.

2. The applicant i.e. original defendant No.1 in Special Civil Suit No. 152 of 2023, has challenged the order dated 14.03.2024 below Exhibit – 22 passed by the learned 8th Joint Civil Judge, Senior Division, Ahmednagar (*hereinafter referred to as “the learned Trial*

Court”). Under the impugned order the application (Exhibit – 22) filed by present applicant for dismissal of the suit on the ground of maintainability has been rejected.

3. Learned Counsel for applicant submits that, present respondent No.1 who is an adoptive son of applicant has filed the suit for partition, separate possession and declaration through his biological father by name Subhash Ramchandra Memane but the same is not maintainable. According to her, as per Section 7 of the Hindu Minority and Guardianship Act, the natural guardian of adoptive son, is an adoptive father and after him, adoptive mother. Thus, she tried to contend that after the adoption the biological father of respondent No.1 – plaintiff had lost the right of guardianship for filing aforesaid suit.

4. On going through the impugned order it is evident that, the learned Trial Court has rejected the application (Exhibit – 22) filed for dismissal of the suit on the ground of maintainability by observing that, whether biological father of the plaintiff i.e. adoptive son of present applicant can file a suit being his guardian, is triable issue and therefore, it has to be decided by framing appropriate issue to that effect. Thus, the learned Trial Court has dismissed the application by observing that, the same is

filed at premature stage.

5. Though the learned Counsel for applicant contended that, the application (Exhibit – 22) was filed for rejection of the plaint but in the said application itself it was not mentioned that, it was filed under Order VII Rule 11 (d) of the Civil Procedure Code. On the contrary, it appears that the said application has been filed for dismissal of the suit on the ground of maintainability by raising the issue that, biological father of respondent No. 1 – plaintiff was not having any right to file such suit on behalf of minor adoptive son of applicant. It is not disputed that, the minor adoptive son by name Sarthak is still having same status as the Adoption Deed is not cancelled or terminated till today. Therefore, to decide such issue the trial is required and at such premature stage the suit cannot be dismissed. Even otherwise also there are no grounds for rejection of plaint as per Order VII Rule 11(d) of the Civil Procedure Code, apparent from the application. Thus, no perversity is found in the impugned order and therefore, the present Civil Revision Application stands dismissed at admission stage.

6. The Civil Revision Application is accordingly disposed of.

[SANDIPKUMAR C. MORE, J.]