



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

910 WRIT PETITION NO. 956 OF 2024

NAMDEV ASHRUBA KAGADE
VERSUS
ASHOK MAROTI KAGADE AND OTHERS

...
Advocate for the Petitioner : Mr. Pathade Vishweshwar Haribhau
...

CORAM : ARUN R. PEDNEKER, J.

Dated : February 07, 2024

PER COURT :-

1. Heard the learned Advocate appearing on behalf of the petitioner.
2. The learned Advocate for the petitioner/original defendant submits that respondents/original plaintiffs filed suit for perpetual injunction against the defendant in the Court of the Civil Judge, Junior Division, Beed, and after appearance, the defendant filed written statement. The defendant contend that during pendency of the suit, the plaintiffs sold out entire suit property to Dadasaheb Waghmare and Shrikant Waghmare, who are not party to the suit. Due to subsequent development, there is no cause of action remained to the plaintiffs against the defendant to proceed with the suit, therefore the defendant filed application Exhibit 11, under Order 7 Rule 11 of the Code of Civil Procedure. The Trial Court rejected the said application.

3. I do not see any error committed by the learned Trial Court while rejecting the application filed by the defendant under Order 7 Rule 11 of the Code of Civil Procedure as the plaint cannot be rejected on the basis of defence raised by the defendant and only the averments in the plaint are required to be considered while deciding application under Order 7 Rule 11 of the Code of Civil procedure.

4. In view of the above, the writ petition is dismissed.

(ARUN R. PEDNEKER, J.)

vj gawade/-.