

VRJ

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

WRIT PETITION NO.6228 OF 2017

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RAMESH
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Dattatraya Jakkanna Choundikar & Ors. ... Petitioners

V/s.

Akkatai Shankar Kore & Ors. ... Respondents

Mr. Umesh R. Mankapure with Ms. Shefy J. Dias and
Mr. Amol Kanak for the petitioners.

Ms. Sejal A. Hariyan i/by Mr. Padmanabh D. Pise for
respondent No.13

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 26, 2024

P.C.:

1. The Trial Court, by the impugned order, rejected the petitioners' application for dismissal of suit under Order 7 Rule 11 of the Civil Procedure Code, 1908. The petitioners raised an objection that present suit being second suit for partition is not maintainable as the same is barred by section 47 of the Civil Procedure Code, 1908. However, on perusal of the pleadings in the plaint, it appears that the plaintiff has made out a case of fraud. Whether the plaintiff proves such fraud, it has to be decided by the Trial Court after considering provisions of Order 6 Rule 4 of the Civil Procedure Code, 1908 and other material which is permissible in law. However, such plaint cannot be rejected

under Order 7 Rule 11 of the Civil Procedure Code, 1908.

2. By keeping petitioners' contention regarding maintainability of the suit at the time of hearing of the suit, the writ petition is dismissed.

3. Pending interlocutory application(s), if any, stand disposed of.

(AMIT BORKAR, J.)