



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

CIVIL REVISION APPLICATION NO. 138 OF 2024

Sagarbai W/o Uttam Karle

VERSUS

Jijabai W/o Rukhamaji Kalyankar And Others

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Advocate for Applicant : Mr. S.S. Chillarge

Advocate for Respondents nos.1-5 : Mr. G.K. Muneshwar

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CORAM	S. G. CHAPALGAONKAR, J.
Dated	10th March, 2025

ORDER :-

1. The applicant impugns the order dated 14.6.2024 passed by the Civil Judge Jr. Division, Himayatnagar below Exhibit-34 in R.C.S. No.62 of 2021, by which prayer of applicant to dismiss the suit under section 11 of the Civil Procedure Code has been declined.

2. Respondents instituted R.C.S. no.62 of 2021 seeking the relief of partition and separate possession of 5/6th share in respect of the suit land, particularly specified in paragraph no.2 of the plaint contending that they are daughters of Champati Mukinda Karale and sisters of Uttam, who died leaving behind the wife Sagarabai i.e. defendant.

3. Defendants appeared in the suit and filed an application below Exhibit-34 contending that previously Nanarao @ Nana Karale had filed RCS No.33 of 2013 seeking relief of partition and separate possession in respect of the suit properties. Plaintiffs were also parties to that suit. R.C.S. No.33 of 2013 is finally decided on 20.4.2023. However, this fact is not brought to notice of the Court by the plaintiffs. In light of the decision in R.C.S. No.33 of 2013 present suit is barred under section 11 of the Civil Procedure Code.

4. Plaintiff opposed the application by filing detailed reply. Trial Court, after considering rival submissions, recorded finding that R.C.S. No.33 of 2013 deals with the properties left behind by Mukinda i.e. father of Champati, Sambhaji, Narayan, Hari, Dattarao and Nanarao. As a consequence of the decree in R.C.S. No.33 of 2013 Champati and others are held entitled to 1/6th share in the suit property. Present suit is filed by legal heirs of Champati claiming their share in the suit properties, therefore, issues which were directly and substantially subject matter of R.C.S. No.33 of 2013 does not arise in present suit, consequently, Trial Court declined to entertain application below Exhibit-34.

5. Heard Mr. Chillarge, learned advocate appearing for the applicant and Mr. Muneshwar learned advocate appearing for the respondent nos. 1 to 5.

6. It can be observed that applicants raised objection as to the bar of subsequent suit under section 11 of the Civil Procedure Code. If such an issue is raised, it cannot be independently decided, but such issue requires decision alongwith other issues framed in suit. The decision on issue of resjudicata requires consideration of evidence on record and analysis of decision rendered in previous suit. There is no provision under law by which the plaint can be rejected at nascent stage by invoking section 11 of the Civil Procedure Code. It is trite law that rejection of the plaint on ground of resjudicata is not permissible under Order VII Rule 11 of the Civil Procedure Code. Apparently, application Exhibit-34 seeking rejection of the plaint u/s 11 of the Civil Procedure Code itself was not maintainable. Therefore, no interference is required in impugned order passed by the Trial Court. However, the issue as to resjudicata, if framed, may be decided in suit alongwith other issues.

7. In light of above observations, Civil Revision Application stands **dismissed**.

(S. G. CHAPALGAONKAR)
Judge

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