

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

164 CIVIL REVISION APPLICATION NO. 173 OF 2025

**SHAIKH SHAKIL S/O ABDUL RAZZAK AND ANOTHER
VERSUS
SAIF S/O ZAHEER AHMED AND ANOTHER**

...
Advocate for the Applicants : Mr. Shaikh Mujtaba Gulam Mustafa
and Mr. Wasif Salim Shaikh
...

**CORAM : SHAILESH P. BRAHME, J.
DATE : 02.09.2025**

PER COURT :

1. Heard the learned Advocate for the applicants. This Revision Application is directed against the rejection of application below Exh. 20 in Regular Civil Suit No. 216 of 2023. The applicants are the original defendants who are seeking rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure.

2. The respondents have filed Regular Civil Suit No. 216 of 2023 for injunction on the count that their mother was the owner of the suit land and after her death it was devolved upon them. The present appellants are the real maternal uncles of the deceased mother and have no concerned with the suit land. It is further contended that on the basis of 'Hiba Nama', which was got executed by them through their deceased mother, they are claiming interest in the suit land. It is further contended that the suit land was never handed over to the applicants. The cause of action is stated to be dated

12.06.2023, when they were obstructed, which has given rise to file the present petition.

3. The applicants had filed application Exh. 20 and sought rejection of plaint on the ground that no cause of action was made out. It is stated that totally false suit is filed, which is against the revenue record. Applicants are in possession in pursuance to the 'Hiba Nama' and without challenging the 'Hiba Nama' or without claiming the relief of declaration, the suit is not maintainable. It is further contended that the suit land was relinquished by the deceased mother in the year 2001.

4. The application is contested by the respondents. By order dated 28.07.2025 the trial Court has rejected application Exh. 20.

5. Learned Advocate for the applicants submits that the cause of action shown in the plaint is imaginary. One of the applicants is a practicing Lawyer at Mumbai and it was not possible for him to cause any obstruction on the given date. It is further contended that the suit is not maintainable in absence of any challenge to the 'Hiba Nama'. When there is cloud over the title of the respondents it was expedient to claim the relief of declaration, without which the suit is not tenable. It is further contended that the suit is hopelessly barred by the limitation. It is further contended that the mother had relinquished her right in favour of the applicants way back in the year 2012.

6. I have considered the submissions of learned Advocate for the applicants and I also carefully gone through the plaint. It discloses the cause of action in paragraph Nos. 4, 5 and 6. The learned Advocate for the applicants is unable to point out as to how the cause of action is illusory and as to how a false claim is made by clever drafting.

7. The submission that the 'Hiba Nama' was executed and the applicants are in possession in pursuance to, that can be dealt with at the time of trial. I am not being shown any provision of law which bars the suit. The objections of the learned Advocate for the respondents are on the merits and those need to be decided during the course of the trial. Similar is the case as to the maintainability of the suit in absence of challenge to the 'Hiba Nama' and the relief of declaration.

8. I find that there is cause of action to the respondents to file suit for injunction. It would be open for the present applicants to agitate the grounds on merits of the matter before the trial Court. It is not within the purview of the Order VII Rule 11 of the Civil Procedure Code to examine as to whether respondents are entitled to possession. In that view of the matter, I do not find any apparent error or perversity committed by the trial Court. The Civil Revision Application is devoid of merit, hence it is rejected.

(SHAILESH P. BRAHME)
JUDGE