

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL REVISION APPLICATION NO.424 OF 2025

1) Naeem Ahmad Gulab Mohmad Kazi
age: 48 yrs Occ:- Business
R/O:-46, Antrolkar nagar-1.
Hotgi road Solapur. 413001.

2) Afroz Ahmed Sardar Shaikh
age: 42 yrs Occ:- Business
R/O:-25/A New Tihregaoan, Forest Solapur.

...Applicant

Versus

1) Umesh Bhimashankar Jamadar
age: 41 yrs Occ:-Business
R/O:-Jamadar Vasti Kumbhari
South Solapur, Solapur.

2) Subhash Mohan Todkari
age:-65 yrs Occ:- retired
R/O:-F-3 Sukh swapna Apartment,
Hotgi Road Solapur.

3) Shrikant Tukaram Jagtap
age:-58 yrs Occ:- Service
R/O:- 23/24 Hrishi nagar,
Near Vikas Nagar, Civil lines Solapur.

4) Sidram Channappa Dindure
age:-66 yrs Occ:- Retired
R/O:-Residence and post at
Hotgi South Solapur, Solapur.

5) Jagannath Channappa Dindure
age:-64 yrs Occ:- Retired
R/O:-Near Nagane Deshmukh Apartment,
Ganesh Housing Society, Budwarpeth Solapur.

6) Shshikala Gurunath Hare
age:-58 yrs Occ:- Housewife
R/O:- Shree Apartment, Chnadak Bagicha,
Budhwar Peth Solapur.

7) Shashank Mohan Todkari
age:-45 yrs Occ:-Service
R/O:- 45 Guruchaya Apartment,
Sagar Gas Godown, Hotgiroad Solapur.

8) Ghansham Tukaram Kadam
age:-66 yrs Occ:-Retired
R/O:-49/12/A,Bhawani Peth,
Hanuman Nagar Solapur.

9) Bhagvat Tukaram Kadam
age:-63 yrs Occ:-Retired
R/O:-49/12/A,Bhawani Peth,
Hanuman Nagar Solapur.

10) Rajkumar Tukaram Kadam
age:-60 yrs Occ:- Business
R/O:-49/12/A,Bhawani Peth,
Hanuman Nagar Solapur.

11) Rukmini Shankar Lugade
age:-79 yrs Occ:- Housewife
R/O:- Near Marathi Vidyalay,
Darbar Galli, Vijaypur Karnatak 586101.

12) Nalini Rajan Jagtap
age:-60 yrs Occ:-Housewife

13) Hrutuja Rajan Jagtap
age:-38 yrs Occ:- Service

14) Anuja Rajan Jagtap
age:-35 yrs Occ:-Service

15) Ajinkya Rajan Jagtap
age:-34 yrs Occ:- Service
Resp.no 12 to 15 R/o:-Near Darasha
Hospital, South Sadar Bazar, Solapur. 413001

...Respondents

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Mr. A. S. Deshpande, Advocate for Applicant.

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : 6th NOVEMBER 2025

JUDGMENT:-

1. Applicant/original defendant impugns order dated 26th August 2025 passed by learned Civil Judge, Junior Division, Solapur, below Exhibit-21 in RCS No. 608 of 2024, by which applicant's prayer for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908, has been declined.
2. Respondent/Plaintiff has instituted RCS No.608 of 2024 for declaration that he has acquired ownership of suit property by way of adverse possession. Applicant/Defendant No.1 appeared in suit and filed an application under Order VII Rule 11 seeking rejection of the plaint on the ground that plaintiff has already instituted Regular Civil Appeal No.1033 of 2014 seeking decree of partition and separate possession, wherein he has raised a claim of title for suit property. In that view of matter, plaintiff cannot claim title by way of adverse possession. Trial Court rejected the said application vide impugned order.
3. Mr. Deshpande, learned Advocate appearing for the applicant, submits that once the plaintiff has averred in the earlier suit that he is heir and entitled to partition of the suit property, he cannot thereafter assert title by way of adverse possession to the same property in the subsequent suit.

4. Admittedly, RCS No.1033 of 2014 filed by plaintiff seeking a decree of separate possession is pending. However, in present case, plaintiff has specifically pleaded that he is in the business of bricks, which has been continued since 2009 over suit property. It is trite that for deciding an application under Order VII Rule 11 of the Code of Civil Procedure, 1908, only pleadings in the plaint are relevant. The contentions in written statement cannot be looked into. From the plaint pleadings, it is not discernible that suit is barred by any provision of law.

5. So far as the issue of limitation is concerned, in fact, in present case it is a mixed question of law and fact. Unless parties go to trial and lead evidence, issue of limitation or adverse possession cannot be decided. From pleadings in RCS No.1033 of 2014, prima facie it is difficult to hold that suit of plaintiff is barred by law, therefore jurisdiction under Order VII Rule 11(d) cannot be exercised.

6. Trial Court has recorded elaborate reasons in the impugned order and has rightly refused to entertain the prayer for rejection of the plaint. In this background, no error of jurisdiction is discernible in impugned order.

7. In result, Civil Revision Application has rejected.

(S. G. CHAPALGAONKAR)
JUDGE