

AGK

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

WRIT PETITION NO.17893 OF 2024

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Savita Santosh Sapkal & Ors.

... Petitioners

V/s.

Alka Arjun Kangude, since
deceased through legal heirs & Anr.

... Respondents

Mr. Vikas Shivarkar for the petitioners.

Ms. Kavita N. Solunke, AGP for respondent No.2-State.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 22, 2025

P.C.:

1. The petitioner/original defendant filed an application under clause (d) of Order VII Rule 11 of the Code of Civil Procedure, 1908 contending that the respondent's suit is barred by law, i.e. Section 11 of the Code of Civil Procedure, 1908. The Trial Court rejected the application.

2. It is well settled that the application under Order VII Rule 11 need to be decided based on the averments in the plaint and the documents annexed along with the plaint which has been made part of the suit.

3. In the facts of the case, the documents which are relevant to adjudicate the issue of *res judicata* is plaint, written statement,

Trial Court's judgment, and Appellate Court's judgment in earlier round of litigation. Such documents have not been produced by the plaintiff for consideration of the Trial Court.

4. It is informed by the learned Advocate for the petitioner that preliminary issue of maintainability of the suit on the ground of *res judicata* has already been decided. Therefore, it shall be open for the petitioner to challenge such finding by instituting proceedings which are permissible in law.

5. The writ petition, accordingly, stands disposed in above terms. No costs.

(AMIT BORKAR, J.)