

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 40 OF 2025

Nagnath Apparao Survase ...Applicant

Versus

Sudhamati alias Subhadra Mahadev
Shendge and ors. ...Respondents

Mr. Rakesh Agarwal, a/w Darpan Jain and Sandeep Nirban,
for the Applicant.

Mr. Hrishikesh Shinde, for Respondent Nos.1 to 3.

CORAM: N. J. JAMADAR, J.

DATED: 30th JANUARY, 2025

PC:-

1. Heard the learned Counsel for the applicant.
2. The challenge in this application is to an order dated 19th August, 2024 passed by the learned Civil Judge, Solapur, whereby the application preferred by the applicant for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908, came to be rejected.
3. It appears that the first suit was withdrawn without liberty to institute a fresh suit on the same cause of action. In addition to a prayer for partition, there is a prayer for declaration in the previous suit as well as in the fresh suit. In the circumstances, whether the applicant was precluded

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from instituting a fresh suit, after having withdrawn the first suit unconditionally, warrants consideration.

4. Issue notice to the respondents, for hearing and final disposal at the stage of admission returnable on 27th February, 2025.

5. Mr. Shinde submits that he has instructions to appear on behalf of respondent Nos.1 to 3.

6. The learned Counsel waives notice for respondent Nos.1 to 3.

7. In addition to notice through Court, the applicant is at liberty to serve respondent Nos.4 and 5 by private service and file an affidavit of service.

8. Respondent Nos.1 to 3 are at liberty to file affidavit-in-reply and serve its copy on the applicant.

9. In the meanwhile, there shall be an ad-interim relief in terms of prayer clause (c).

[N. J. JAMADAR, J.]