

ANANT
KRISHNA
NAIK

Digitally signed
by ANANT
KRISHNA NAIK
Date:
2025.03.22
10:27:15
+0530

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

CIVIL REVISION APPLICATION NO. 439 OF 2024

Jayprakash Mahadeo Kadam And Ors

....Applicants

V/S

Smt Sunanda Haribhau Naiknaware And Ors

....Respondents

Mr. Ajay A. Joshi for the Applicants

None for the Respondents

CORAM : M. M. SATHAYE, J.

DATED : 21st MARCH 2025

P.C.:

1. Heard learned Counsel for the Applicants.
2. Revision Application is filed challenging the order dated 23/04/2024 passed by the Civil Judge, Senior Division, Malshiras below Exh. 38 passed in the Special Civil Suit No. 441 of 2022.
3. The Applicants are the Defendant Nos. 2 and 4. The Respondent No. 1 is the sole Plaintiff. The said Application was filed under provisions of Order 7 Rule 11 of the Civil Procedure Code, 1908 ("CPC" for short), raising objection about the suit being barred by the provisions of law under provisions of Order 7 Rule 11(d) of CPC.
4. Inviting the Court's attention to the Application below Exh. 38 and the written submissions filed on behalf of the Applicants in the Trial Court, it is contended that the suit filed by the Respondent No. 1 seeking partition is barred by explanation to Section 6(5) of the Hindu Succession Act. It is

submitted that the Respondent No. 1 has admitted in the Complaint that the registered partition has been effected in the family on 12/09/1990, which is prior to the amendment of Section 6 (w.e.f. 09/09/2005). He submits that the explanation provides that the partition means partition under duly registered document or by the decree of the Court. In such circumstances, according to learned Counsel for the Applicants, the suit as filed cannot be maintainable and is barred. He submits that the registered partnership deed is produced by the Plaintiff alongwith the Complaint under list of documents, item no. 22.

5. It is stated on instructions that issues are not yet framed in the Suit. Statement accepted.

6. Issue notice to the Respondents, returnable on 21/04/2025.

7. Till next date, there will be ad-interim relief in terms of prayer clause (C) which reads as under:

“(C) During pendency of this Revision Application, this Hon’ble Court may please to Stay further proceeding of Spl C S no. 441 of 2022 filed before CJSD Malshiras”

(M. M. SATHAYE, J.)