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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
CIVIL REVISION APPLICATION NO. 46 OF 2022  
WITH  
INTERIM APPLICATION NO. 7193 OF 2025**

Nandkumar Kisan Gote and Others ... Applicants

vs.

Rajendra Baburao Gawade and Others ... Respondents

Mr. Tushar Sonawane for the Applicants.

Mr. Ramdas Hake Patil for Respondent Nos. 12 to 14.

Mr. Sachin Ramrao Pawar for Respondent Nos. 1 to 3.

**CORAM : GAURI GODSE, J.**

**DATED : 10<sup>th</sup> DECEMBER 2025**

**ORDER:**

1. This application is filed by the original defendant nos. 1 to 5 to challenge the order passed by the trial court rejecting their application under Order VII Rule 11 of the Civil Procedure Code, 1908 ('CPC').

2. Learned counsel for the applicant submits that the prayer in the suit for declaration is barred by the law of limitation on plain reading of the cause of action pleaded in the plaint. He submits that the suit is under valued and thus, the plaint also deserves to be

rejected at the threshold for under valuation and non-payment of proper court fees. He therefore submits that, considering the plain reading of the plaint, the application deserves to be rejected at the threshold.

3. Learned counsel for the plaintiffs supports the impugned order. He submits that the suit is a substantive suit for seeking partition and separate possession of the plaintiffs' share. Based on the prayers for partition and separate possession, the plaintiffs have claimed for the declaration that the sale deed and the agreement falsely executed *inter-se* between the defendants will not be binding upon the plaintiffs' share. He points out the cause of action pleaded in the plaint for seeking partition and separate possession that arose in August 2021, when the plaintiffs' share was denied by defendant nos. 1 to 6. He submits that the objections on the under valuation cannot be considered at the time of considering the rejection of the plaint under Order VII Rule 11 of the CPC, as there is no order passed for correcting the valuation and payment of any court fees. He points out the observation by the trial court in paragraph no. 7 of the impugned order which clarifies that at the time of trial, if it is found necessary, the plaintiffs can be directed to make the valuation and pay the proper court fee.

4. I have carefully perused the papers of the plaint. The substantial relief is for partition and separate possession. Based on the prayer for partition and separate possession, the prayer is for a declaration in respect of the undivided share of the plaintiffs in the suit property. The cause of action and the events prior to the cause of action are substantially pleaded in the plaint. The plaintiffs have also pleaded regarding the objections on the area mentioned in the agreement for sale and the agreement executed *inter-se* between the parties that would affect the plaintiffs' right seeking partition and separate possession of the specific share. The cause of action pleaded in paragraph no. 17 of the plaint is supported by the substantive pleadings in the earlier paragraphs to support the claim on partition and separate possession. There is no inquiry regarding the under valuation of the suit, and no order is passed and for the payment of court fees and correcting the valuation. Thus, the trial court has rightly observed in paragraph no.7, if it is found necessary, the plaintiffs can be directed to make the valuation and pay the proper court fee.

5. Considering the pleading to support the prayer for partition and separate possession and the cause of action for the prayer made within limitation, the suit would warrant a trial, and the plaintiffs would be entitled to lead evidence to support their

contention. Thus, the trial court has rightly refused to reject the plaint at the threshold. I do not find any jurisdictional error or any other manifest error in the reasons recorded in the impugned order, warranting interference by this Court in exercise of power under Section 115 of the CPC.

6. The civil revision application is therefore dismissed.

7. Needless to clarify that the observations in the impugned order and this order are restricted to the decision of the application for rejection of the plaint under Order VII Rule 11 of the CPC. Hence, the rival contentions of the parties are kept open to be decided in the suit.

8. In view of the disposal of the civil revision application, the pending applications are disposed of as infructuous.

**(GAURI GODSE, J.)**