



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL REVISION APPLICATION NO.65 OF 2025

APPLICANTS
(Orig. Defendants)

- :-** 1) Himanshu Rajesh Agrawal
Aged about 32 years, Occupation:
Business, R/o Vanshree Apartment, Akola
Road, Akot, Dist. Akola.
- 2) Suresh Bajranglal Agrawal,
aged 75 years, Occupation: Business, R/o
Behind Purva Apartment, Akola Road,
Akot Dist. Akola.

..VERSUS..

RESPONDENTS
(Orig. Plffs.)

- :-** 1) Chandrashekar Ashokrao Gawande
Aged 43 years, Occ.- Retired Teacher
- 2) Ravindra Shankarrao Kapase, Aged 59
years, Occ. – Retired Teacher
- 3) Vinayak Balkrushna Wadtkar
Aged about 74 years, Occupation : Retired
Teacher.
- 4) Vasant Gulabrao Pundkar
Aged about 72 years, Occ. – Retired
- 5) Narendra Dinkarrao Ingle
Aged about 60 years, Occ. – Cultivator
- 6) Ritesh Nilkantharao Borkar
Aged about 42 years, Occ. – Business
- 7) Kishor Motiram Date
Aged about 59 years, Occ. – Retired

All R/o Shrikrupa Colony, Akola Road,
Akot, Tah. Akot, Dist. Akola.

8) Akot Municipal Council Akot
Through its Chief Officer, Municipal
Council, Akot Dist. Akola.

Mr. A.P. Tathod, Advocate for Applicants.
Mr. V.B. Bhise, Advocate for Respondent Nos.1 to 3.
Mr. A.J. Thakkar, Advocate for Respondent No.8.

CORAM : ROHIT W. JOSHI, J.

DATE : 17/12/2025

ORAL JUDGMENT :

1. Heard finally with consent of learned counsel for the respective parties.

2. Applications for rejection of the plaint were filed by the present applicants, who are the original defendant Nos. 1 and 2, in Regular Civil Suit No. 156 of 2024, vide Exhs. 26 and 34, and the same came to be rejected vide order dated 16.04.2025. The present Civil Revision Application is filed assailing the said order. The learned Advocate for the applicants contends that although the suit is for removal of encroachment, the plaint map showing the location of the alleged encroachment is not filed and other particulars, as

required to be provided under Order VII Rule 3 of the Code of Civil Procedure, 1908, are not missing in the plaint. He further submits that the plaint does not disclose a cause of action in favour of the plaintiffs, inasmuch as the plaintiffs have failed to make out any right to claim reliefs sought in the plaint.

3. As regards Order VII Rule 3 of the CPC, Bombay High Court Amendment provides that a plaintiff in a suit relating to immovable property must provide appropriate description of the land in order to identify the same and must mention the boundaries or the number in the record of settlement of survey in the plaint. Further, in case of encroachment, a sketch map should be filed showing, as approximately as possible, the location and extent of the encroachment.

4. The allegations against the defendant No.1 are that he is making construction of a commercial-cum-residential building by the name “Krushnakunj Apartment” on plot No.8 in the adjoining layout of Mr. Bajranglal Agrawal, which is carved out in land bearing Survey Nos.657, 658 and 642/3 admeasuring around 0.87 H.R. situated at Akot, Tah. Akot, Dist. Akola. Reference is made to order of non-agricultural assessment in favour of Shri Bajranglal

Agrawal in the plaint. It is alleged that defendant No.1 while making construction of the aforesaid building, has committed encroachment over open space in the layout of Shrikrupa Colony by creating approach road from the said open space. As regards defendant No.2, the allegation is regarding construction of compound wall in plot No.5 in the layout of Mr. Bajranglal Agrawal. It is alleged that while making construction of compound wall, he has made encroachment over the open space of Shrikrupa Colony. The plaintiffs have also averred that layout of Shrikrupa Colony is carved out over land bearing Survey Nos.645 and 643 of Akot, Tah. Akot, Dist. Akola. Reference is made to order of non-agricultural assessment with respect to layout of Shrikrupa Colony. It is stated that layout plan of Shrikrupa Colony is duly sanctioned. The plaintiffs have specified the plot numbers in layout of Bajranglal Agrawal over which construction was made by defendant Nos.1 and 2. The plaintiffs have also stated that the encroachment is being made over open space in layout of Shrikrupa Colony. Reference is made to sanctioned layout plan of Shrikrupa Colony as also order of non-agricultural assessment of both the layouts in question. The particulars pleaded are sufficient to identify the encroachment over the suit property. The same can be identified by

reference to sanctioned layout plan, reference to which is made in the plaint. It must also be borne in mind that unless it is absolutely clear that the plaint is barred by law a drastic order of rejection of plaint should not be passed. The first contention with respect to Order VII Rule 3 of the CPC, therefore needs to be rejected.

5. As regards, the contention that the plaint does not disclose any cause of action, the said contention is also liable to be rejected, as the open space on which encroachment is allegedly made is earmarked for the benefit and use of all the residents of the locality. If there is an encroachment on an open space earmarked in a residential layout, the residents of the layout will have a cause of action to seek a decree for removal of such encroachment. In view of the above, second contention is also liable to be rejected.

6. In the considered opinion of this Court, having regard to the limited scope for rejection of plaint under Order VII Rule 11 of the CPC, the learned trial Court has not committed any jurisdictional error while passing the impugned order. Civil Revision Application is therefore **rejected**.

7. Since the present revision arises out of an order rejecting the plaint, the plaint averments will have to be considered on their

face value and the defence of the defendants is to be ignored, the contentions raised and pressed into service in the present Civil Revision Application can be agitated while prosecuting the suit on merits.

(ROHIT W. JOSHI, J.)

C.L. Dhakate