



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

73 CRA NO. 170 OF 2025

BAPUSAHEB SHANKAR SHETE AND ORS.
VERSUS
SHANTABAI ANNASAHEB SHETE AND ORS.

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Advocate for the Petitioner : Mr. Zafar M. Pathan
Advocate for Respondent : Mr. Wagh Umakant U.

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CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 05.02.2026

PRONOUNCED ON : 11.02.2026

PER COURT :

Heard both sides on 29.01.2026. It was listed for clarification. Civil Revision Application No. 5/2006 was also listed, involving similar issue. Again heard both sides on 05.02.2026.

2. The applicants are taking exception to the order dated 06.04.2023, refusing to reject the plaint under Order VII Rule 11 of the Code of Civil Procedure passed by the Trial Court in Regular Civil Suit No. 799/2016. The applicants are defendants. The respondent nos. 1 and 2 are the original plaintiffs in Regular Civil Suit No. 799/2016.

3. The respondents/plaintiffs has filed suit for partition and declaration that compromise decree passed in Regular Civil Suit No. 657/2015 is not binding and consequential mutations are bad in law and injunction. The applicant submitted application (Exh. 25) under Order VII Rule 11 of CPC pointing out bar under Rule 3A of Order XXIII of the Civil Procedure Code. By impugned order the application is rejected holding that limitation is a mixed question of law and facts and proper court fees has been paid. It is further recorded that the grounds of defence can be dealt with on merits during the course of trial.

4. Learned counsel for the applicants submits that impugned judgment is against law laid down by the Supreme Court in the matters of **Triloki Nath Singh Vs. Anirudh Singh; (2020) 6 SCC 629, Sree Surya Developers and Promoters Vs. Sailesh Prasad and others; (2022) 5 SCC 736, M/s. Mutha Industries Vs. Mr. Meena Milind Bhansali**. It is further submitted that remedy available for the respondents/plaintiffs is to approach the Civil Court, which recorded the compromise in Regular Civil Suit No. 657/2015 and not by a separate suit. It is further submitted that it would be abuse of process of law to proceed with the suit.

5. Per contra, learned counsel Wagh repels the submissions. He would submit that proper court fees has been paid and that cannot be a ground for rejection of plaint. My attention is adverted to say filed at Exh. 25 to the application. It is further submitted that relief in respect of mutation entries can be entertained in the separate suit. It is vehemently contended that respondents/plaintiffs were not party to earlier suit and behind their back, fraudulently compromise decree was obtained causing great prejudice to their right and interest.

6. Learned counsel for the applicant Mr. Jafar Pathan vehemently submitted that present suit is barred by Rule 3A of Order 23 of C.P.C. and suit is barred by proviso to Section 34 of Specific Relief Act.

7. Learned counsel for respondent Mr. Umakant Wagh also attempted to reply the submissions.

8. I have gone through application Exh.25 and the impugned order carefully. Application Exh.25 does not spell out the grounds for rejection of the plaint which are canvassed before this Court. The impugned order also does not refer to the submissions of the parties on those counts. Applicants are for the first time seeking rejection of the plaint on altogether new grounds. I am therefore, not inclined to examine that aspect of the matter

for the first time in High Court. It would be open for the applicant to raise grounds by filing separate application before the Trial Court. The case law cited by the parties also need not be dealt with. The grounds of non-joinder of necessary parties cannot be said to be good ground for rejection of the plaint. In that view of the matter, I pass following order :

ORDER

- (i) Civil Revision Application is disposed of with a liberty to the applicant to file application under Order 7 Rule 11 on the precise grounds except the ground of non-joinder of necessary parties.
- (ii) If such application is filed it shall be decided on its own merits.
- (iii) Impugned order passed below Exh.25 shall stand confirmed to the extent of ground pertaining to non-joinder of necessary parties.

(SHAILESH P. BRAHME, J.)

mkd/-