



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

82 CRA NO. 202 OF 2025

ABHAY S/O ARUN DAITHANKAR
VERSUS
ADITYA S/O ABHAY DAITHANKAR AND OTHERS

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Advocate for Applicant : Dr. R. R. Deshpande h/f Mr.
Deshpande Priyanka R.
Advocate for Respondent Nos.1 & 2 : Mr. Kokad Amol Ashok.
Advocate for Respondent No.5 : Mr. Ban Adesh Ravindra.
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CORAM : SHAILESH P. BRAHME, J.
DATE : 19.01.2026

FINAL ORDER :-

1. Heard both sides finally.
2. Civil Revision Application is directed against order dated 04.09.2025 passed below Exh.35 in Regular Civil Suit No.804 of 2022 refusing to reject claim by invoking powers under Order 7 Rule 11 of CPC.
3. Learned counsel for the applicant submits that learned Judge has committed error apparent on the face of the record in holding that the full-fledged trial is required when plaint unequivocally discloses the suit property as self-acquired property of Shankarrao which was bequeathed by him by registered will dated 29.04.2011. It is submitted that respondents/plaintiffs can have no claim, title, interest in the

subject matter when the property is neither coparcenary property nor joint Hindu family property. It is further submitted that the claim for partition is absolutely untenable from reading the plaint itself because there is no right to sue and it is impermissible to claim partition during life time of grandfather, father and uncle of the plaintiff Nos.1 and 2. It is submitted that learned Judge committed perversity in recording that further inquiry is required and the plaint cannot be rejected at the threshold.

4. Per contra, learned counsel Mr. Kokad appearing for the plaintiffs would submit that the facts are disputed one and in the absence of any full-fledged trial no conclusion can be drawn at this stage. It is submitted that applicant has failed to make out a case that suit is barred by any provisions of law. It is further submitted that unless will is proved no benefit can be derived from it and which can be done after full-fledged trial only. It is further submitted that scope of inquiry under Order 7 Rule 11 is very narrow and learned Judge is justified in rejecting application Exh.35.

5. After having considered rival submissions of the parties, plaint and the registered will in question are the only relevant documents which can be gone into at this stage. In very clear

words, it is stated in paragraph No.2 that subject matter was belonging to Shankarrao Sitaram Daithankar. In paragraph No.3 it is pleaded that original owner bequeathed subject matter by registered deed dated 29.04.2011 in favour of the defendants. A copy of the registered will produced along with the plaint unequivocally states that Shankarrao was the owner and he bequeathed the property. If this is the situation then the subject matter cannot be said to be either joint family property or coparcenary property. This conclusion can be drawn as per pleadings in the plaint and not by way of any inference or defence pleaded in written statement.

6. The cause of action has been stated to be in paragraph Nos.15 and 16 for filing suit for partition claiming interest and share in the subject matter. The *sine qua non* for cause of action is right to sue. Going by the case pleaded in the plaint, I find no right to sue exists for reasons which are as follows :

- (i) Suit property was self-acquired property of Shankarrao and after execution of will the legatee under the Will became absolute owner.
- (ii) The legatee under will are entitled to have right to dispose of the property being absolute owner.

(iii) The plaintiff Nos.1 and 2 are great grand children and no right to claim partition exists when the son and grandsons are alive.

(iv) As per Section 30 of the Hindu Succession Act it would be open for the applicant for Shankarrao to dispose of his property by Will.

7. Above aspects of the matter is lost sight of by learned Judge which is patent illegality. Learned counsel for the applicant has rightly referred to judgment in case of Vishwambhar Namdev Nikam and another Vs. Saw. Sunanda Maheshankar Suryawanshi in Civil Revision Application No.119 of 2025.

8. In view of the above position, I am of the view that interference is called for in the impugned order.

9. Civil Revision Application is allowed.

10. Impugned order is quashed and set aside.

11. Plaint is rejected.

(SHAILESH P. BRAHME, J.)

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