



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

CIVIL REVISION APPLICATION NO. 231 OF 2025

**KUNDLIK S/O DATRAO FEGADE AND OTHERS
VERSUS
MAROTRAO S/O GANGARAM FEGADE AND OTHERS**

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Advocate for Applicants : Mr. U.B. Bilolikar
Advocate for Respondents : Mr. S.V. Suryawanshi

CORAM : SHAILESH P. BRAHME, J.
RESERVED ON : 19.01.2026
PRONOUNCED ON : 29.01.2026

PER COURT :

Heard both sides.

2. Revision Application is directed against order dated 03.10.2025 passed below Exh. 13 in Regular Civil Suit No. 185/2025, refusing to reject the plaint by invoking powers under Order VII Rule 11 of Civil Procedure Code (CPC).

3. The respondents have filed Regular Civil Suit No. 185/2025 for declaration and injunction in respect of land Gt No. 82, which is totally measuring 6-H 76-Are. The cause of action for the plaintiffs is that the area of the suit land before and after the implementation of the consolidation scheme differs. Original survey No. 15 and 16 were converted into Gat No. 82. Respondents are stated to be owners and in possession of the area. It is disclosed in the plaint that parties have approached the authorities under the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter 'the Act') for correction of the record and for submission of the new scheme and those proceedings are yet to be finalized. The applicants are stated to have

caused disturbance to the possession of the respondents. On 14.06.2025 they are stated to have again threatened to dispossess the respondents. Hence the suit has been filed for declaration of ownership and injunction.

4. Petitioners preferred application Exh. 13 under Order VII Rule 11 of the Code of Civil Procedure on the count that no cause of action has been made out, suit is barred by limitation and there is prohibition under Section 36A of Act. By impugned order the application is rejected.

5. Learned counsel Mr. Bilolikar advanced submissions on the line of the contentions of his application Exh. 13. It is additionally submitted that unless the competent authority carries out the correction and finalizes the proceedings, suit is premature and no relief as such can be granted. It is further submitted that the prayers are absurd and based upon illusory cause of action which is cleverly drafted. It is further submitted that suit is vexatious and remedy of varying scheme, which is already barred is tried to be overcome by the present suit.

6. Per contra, Mr. Suryawanshi repels the submissions. It is submitted that the respondents are not challenging any order passed by the authority under the Act. It is submitted that for relief of injunction a cause of action has been stated and which cannot be said to be barred by any law. It is further submitted that the plea advanced by the applicants can be tested during the course of trial and the drastic action of rejection of plaint is not warranted.

7. Having considered the rival submissions of the parties, it reveals that parties are adjoining owners of the land. The gravamen of the allegation by the respondents/plaintiffs is that applicants are threatening to dispossess them and causing obstruction to their peaceful possession. For correction of the revenue record an appeal was preferred to the Deputy Director of Land Records, who relegated it to the Deputy Superintendent of Land Records. Deputy Superintendent of Land Records conducted enquiry and reported

variance in the area of the land before and after implementation of the consolidation scheme. The competent authorities have not passed any specific order or decided to go for modification or formulation of new scheme.

8. The meaningful reading of the plaint reveals that cause of action is specifically shown in paragraph nos. 4 to 7. The alleged overt act of the appellants on 14.06.2025 is a cause of action for praying relief of perpetual injunction, which is independent one. I am of the considered view that this particular relief cannot be said to be barred by any provisions of law. The plaint cannot be rejected at least to this extent.

9. The respondents/plaintiffs solicited relief of declaration in respect of their ownership and possession and in respect of illegal transaction got executed by the applicants in their favour. Respondents have not specifically challenged any order or the scheme or decision taken by the competent authority under the act. The prohibition under Section 36A of the Act cannot be made applicable. A full fledged trial is required to come to conclusion as to whether respondents are entitled to the relief sought for or not, and drastic action of rejection of plaint is not warranted at this stage.

10. The relief of declaration in respect of the illegal transactions is in a way absurd because no specific transaction or instrument has been quoted but that itself would not render the plaint rejectable. The limitation is a mixed question of law and facts. I find no illegality in the decision taken by the Trial Court in rejecting the application.

11. By following the judgment of the Supreme Court in **Central Bank of India and anr. Vs. Prabha Jain and others; (2025) 4 Supreme Court Cases 38**, especially observations in paragraph no. 24, I am not inclined to hold that plaint is liable to be rejected under Order VII Rule 11 of C.P.C.

12. Mr. Bilolikar has relied upon the judgment of **Dahiben Vs. Arvindbhai**

Kalyanji Bhanusali (D) thr. L.Rs. And others; AIR 2020 SC 3310. I have gone through the relevant paragraph no. 12.3, 12.7, 12.8 and 13. The judgment is useful to understand scope of Order VII Rule 11 and meaning of the word '*cause of action*'. The facts in that case are distinguishable. This judgment will not help the applicants.

13. Further reliance is placed on the judgment of **Ravi Bhaskar Wattamwar Vs. Babanrao Narbajji More and others; 2025(3) BomCR 458.** In that case the plaintiff had challenged the sale-transactions of 1972 and 1975, which were executed when he was minor. In the year 1978 when he attained majority he was aware of the transaction, but he waited for about 43 years and then filed suit for declaration. Under these peculiar facts the coordinate bench rejected the plaint. The facts are distinguishable and the ratio cannot be made applicable to the present case.

14. Further reliance is placed on judgment of **Manisha Vs. Dinendraprasad and others; 2025 : BHC-NAG : 7892.** In that case a mutation entry was specifically challenged before the Civil Court. Therefore, in view of bar created under Section 155 and 158 of the Maharashtra Land Revenue Code, 1966 a suit is stated to be barred by law and the plaint was rejected. In this case, facts are different and this judgment will also not be helpful to the applicant.

15. Reliance is also placed on the judgment of **Dattu Appa Patil Vs. State of Maharashtra and others; 2006(6) AllMR 421.** In that case orders passed by the Commissioner are directly challenged before the Division Bench after about 27 years. Hence it was held that the petition was liable to be rejected. It was not a judgment, in which the rejection of the plaint under Order VII Rule 11 is solicited. Hence this judgment will be of no avail.

16. Further judgment of **Vishwambhar s/o Namdev Nikam Vs. Sunanda w/o Maheshankar Suryawanshi; 2025(6) Mh.L.J. 643.** I have gone through paragraph no. 17 of the judgment. In the present case no case is made out

that the cause of action is created by clever drafting and illusory.

17. I find no merit in the revision application. It is rejected.

(SHAILESH P. BRAHME, J.)

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