

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.29 OF 2026

Ranjan Bhausahab Dombé and others ... Applicants
versus
Kamlakar Eknath Salunkhe (since deceased)
through his heirs and Legal Representatives,
1A. Ratnaprabha Kamlakar Salunkhe and others ... Respondents

Mr. Machhindra A. Patil, for the Applicants.

CORAM : M.M. SATHAYE, J

DATE : 9th FEBRUARY, 2026

P.C:

1. Heard learned counsel for the Revision-Applicants. Perused the record.

2. Defendant Nos.4,5 and 6 have filed this Revision Application under section 115 of the Code of Civil Procedure, 1908 ('CPC' for short) challenging the order dated 14.11.2025 passed below Exh.208 in Special Civil Suit No.129 of 2011. By the said impugned order, the application filed by Defendant No.4 (under the provisions of Order-23, Rules 1 and 2 and section 151 of the CPC for rejection/dismissal of the suit) is dismissed.

3. Mr. Patil, learned counsel for the Revision-Applicants submitted that earlier suit filed by the plaintiff for perpetual injunction was withdrawn with liberty to file fresh suit. He submitted that earlier, the

Hon'ble Court while considering the Applicant's application under Order-7, Rule-11(d) of C.P.C, had observed in order dated 26.07.2024 in CRA/06/2023 that Defendants are at liberty to challenge maintainability of the suit and they will be at liberty to file appropriate application. He submitted that pursuant to the said liberty, present application Exh.208 has been filed and considering the objections raised by Applicant, suit must be dismissed/rejected as not maintainable. He submitted that suit notice was issued in October and November 2002 and subsequent suit for specific performance is filed on 07.09.2011 after withdrawing earlier suit with liberty on 22.04.2010; therefore, it is clearly time barred. He submitted that under Order-23, Rule 2 of CPC, it is provided that if any fresh suit is instituted on permission granted under Order-23, Rule 1, the plaintiff is bound by law of limitation in the same manner as the first suit has been instituted. He submitted that the suit also needs to be dismissed for suppression of material fact about unregistered impounded document.

4. Perused the application Exh. 208. Though the application makes a reference to objection about delay condonation in filing suit, Mr. Patil fairly submits that it is an incorrect pleading and in essence objection about maintainability and limitation is raised.

5. I have considered submissions. Perused earlier order dated 26.07.2024 passed by this Court. A reference to three earlier applications Exh. 149, 131, 145 and 32 is made in the said order by which it appears that earlier attempts of Defendants to get the suit dismissed or plaint rejected for one reason or the other have failed. Hearing of the concerned suit is expedited by this Court.

6. Perusal of the impugned order indicates that the Trial Court has considered the facts and has also considered the order passed by this Court and liberty granted therein. After considering the contentions of the applicants, the Trial Court has held that power under section 151 of

CPC (which is an inherent power) and the provisions under Order-23, Rule 2 can not be invoked for dismissal / rejection of suit / plaint as argued by the Applicants unless evidence is led and it is considered.

7. After considering the provisions of law invoked and the prayer made in application Exh. 208 as well as after considering the earlier orders, in my view, the Trial Court has rightly held that objections, as raised by the Applicants, cannot be considered without appreciating the evidence on record. In paragraph 23 of the impugned order, the Trial Court has clearly kept the rights and contentions of the Applicants open, to raise objection about limitation and application of Article 14 of Limitation Act.

8. In that view of the matter, no apparent illegality or perversity is found in the impugned order. There is no jurisdictional error.

9. **Civil Revision Application is accordingly dismissed.** It is clarified that the subject matter suit shall be decided on it's own merits, in accordance with law and all contentions on merits of both sides are kept open.

10. All concerned to act on duly authenticated or digitally signed copy of this order.

[M.M. SATHAYE, J.]