

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.42 OF 2026

Habib Rasul Naikwadi and others ... Applicants

Versus

Jeevan Dattu Awale ... Respondent

Mr. Satyajeet M. Mirajkar, for the Applicants.

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CORAM : M. M. SATHAYE, J.

DATE : 24th February 2026.

P C. :

1. Heard learned counsel for the Applicants. Perused the record.
2. The Applicants are Defendants in Regular Civil Suit No.23/2025 filed by the Respondent/Plaintiff. By the impugned order dated 22.12.2025, the Trial Court has rejected Application Exh.24 filed for rejection of plaint.
3. Perused the plaint. The said suit is filed on the averments that the suit property was owned initially by Bombay Diocesan Trust Association Private Limited, which has been purchased by the Plaintiff under a registered document dated 28.06.2002 for consideration of Rs.40,000/-. It is asserted that the Plaintiff is in possession of the suit property as owner thereof. The Plaintiff has pleaded that consequent Mutation Entry No.1044 is effected in his favour. The Plaintiff claims to have taken electricity connection and entry in the Municipal record as owner and possessor of the suit property. The

plaint goes on to plead that the Respondents, taking advantage of being local residents, are obstructing the possession of the Plaintiff. It is clearly pleaded that in February, 2025, when the Plaintiff was cleaning the suit premises, the Defendants allegedly obstructed the possession and when Plaintiff tried to approach the Police Authorities, he was not entertained stating that this is a dispute of civil nature. On such averments, Plaintiff filed a suit seeking perpetual injunction against the Respondents from disturbing his possession of the suit property.

4. The Applicants filed an Application Ex. 24 purportedly under Order-VII, Rule-11(a) and (d) of the Code of Civil Procedure, 1908 (for short 'CPC'). The contentions in the said application are rather interesting. They contended that the Plaintiff seems to have entered his name in the Property Card by committing fraud. The property's earlier ownership to Bombay Diocesan Trust Association Private Limited is disputed. It is further pleaded that suit property belongs to SPG Mission, Kagal for which the Defendants are working as caretakers. It is contended that suit is filed on the basis of illegal pleading (बेकायदेशीर कथन).

5. The Applicants has further contended that suit is filed on the basis of 'so-called cause of action'. That suit is filed for injunction when Plaintiff is not in possession. The Applicants go on to contend that the plaint is 'ill-drafted' and the principle of 'no possession, no injunction' is applicable and, therefore, the plaint is liable to be rejected under Order-VII, Rule-11(a) and 11(d) of the CPC.

6. Even before the impugned order can be perused, by which the Application is rightly rejected, it must be noted that no provision of law is

quoted in the Application Ex. 24 under which the suit is claimed to have been barred as provided under Order-VII, Rule-11(d) of the C.P.C.

7. The Application is omnibus in nature and is clearly filed without understanding the difference between stages of the suit viz. that of rejection of plaint and hearing on merits on the basis of evidence. The Application claims 'fraud played by the Plaintiff'. The case of fraud cannot be considered at the stage of Order-VII, Rule-11 because it requires evidence.

8. The Applicants claim to be caretakers on behalf of SPG Mission, Kagal. However, that is their defence and defence is not relevant at the stage of Order-VII, Rule-11. The Defendants also contend that suit is based on 'illegal pleadings'. Whether the case of the Plaintiff is legal or illegal can be decided at the time of hearing, but there cannot be such assumption so as to non-suit the Plaintiff.

9. Learned Counsel for the Applicants submitted that if the Plaintiffs are not in possession, they cannot claim injunction. Whether the Plaintiff is in possession or not is a matter of finding, that can be arrived at only on the basis of evidence. Plaintiff is not shown to have admitted that he is not in possession. The arguments advanced before the Court are in the realm of evidence which cannot be considered at the time of rejection of plaint.

10. Perusal of the plaint indicates that cause of action is pleaded which cannot be said to be illusory and therefore, the plaint cannot be rejected under Order-VII, Rule-11(a) of the CPC.

11. Prayer for rejection of the plaint under Order-VII, Rule-11(d) need not even be considered because no bar is pointed out in the Application, much less argued.

12. At this stage, learned counsel for the Revision-Applicant invited the Court's attention to averments in the written statement that for sale of trust property, permission of Charity Commissioner is required and there is no evidence that such permission is taken. Permission for sale of the trust property is different from permission of the Charity Commissioner required for filing suit. The Plaintiff claims to have become owner under registered document. Once again, this objection can be decided on merits after evidence is led and the suit is heard on merits.

13. Viewed in the light of what is observed above, when the impugned order is perused, it is seen that the learned trial Judge has properly considered the scope of Order-VII, Rule-11 of CPC and, therefore, no fault can be found with the impugned order of rejection.

14. Considering that Application under Order-VII, Rule-11 of CPC is filed in the most omnibus manner and by raising contentions which are in the realm of evidence, without quoting any specific bar to the suit, thereby taking precious judicial time of the Trial Court as well as this Court, Revision Applicants are required to be saddled with costs.

15. **Accordingly, Civil Revision Application is dismissed.** Revision Applicants are directed to pay costs of Rs.15,000/- to the Respondent/Plaintiff within a period of 4 weeks from today. If the costs are not paid and its proof is not produced in the Trial Court, the same shall be

treated as non-compliance with the order of the Court and its effect on the defence taken by the Applicants, shall be considered by the Trial Court under Order -XXXIX, Rule 11 of CPC.

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

[M. M. SATHAYE, J.]