IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 445 OF 2026

Shailesh S/o Nihala Singh ..Applicant

Versus

Ratnesh Nihala Singh …Respondent

Mr. Ajit Anekar (through VC) with Avanti Kher, Sanskruti More and Madhuri Negi, i/b Auris Legal, for the Applicant.

CORAM: N. J. JAMADAR, J.

DATE : 18th AUGUST 2026

ORDER:

1. Heard Mr. Ajit Anekar, the learned Counsel for the Applicant.

2. This Revision Application is directed against an order dated 23rd June 2026 passed by the learned Judge, City Civil Court in Notice of Motion No. 1577 of 2025, whereby the said Notice of Motion taken out by the Applicant-Defendant for rejection of the Plaint under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 ("the Code"), came to be dismissed.

SAINATH SANJAY BODKHE Digitally signed by SAINATH SANJAY BODKHE Date: 2026.08.24 19:27:51 +0530

3. The Respondent-Plaintiff is the brother of the Applicant. The substance of the claim of the Plaintiff is that, the property situated at Bomji Shivaji Estate, Village Koile Kalyan Pipeline, Santacruz (E), Mumbai 400 055, comprises of a bungalow divided in two parts (the

suit property). The Plaintiff, Defendant and their mother have resided in the suit property along with the deceased father of the Plaintiff and the Defendant. The suit property is a tenanted premises. The Plaintiff and Defendant have been in the occupation of two separate portions of the suit property. There is a common passage for the ingress and egress of both the Plaintiff and Defendant.

4. The Defendant had allegedly changed the lock to the gate installed in the common passage and thereby obstructed the unrestricted access of the Plaintiff to the portion of the suit property which is in the occupation of the Plaintiff. Hence, the suit for declaration that the Defendant has no right to cause such obstruction and for injunction to restrain the Defendant from causing such obstruction.

5. The Applicant filed the Notice of Motion seeking rejection of the Plaint on the ground that the City Civil Court has no subject matter jurisdiction to entertain, try and decide the suit as the dispute as to the tenancy rights are within the exclusive province of the jurisdiction of the Court of Small Causes at Mumbai. Secondly, the suit is bad for non-rejoinder of necessary parties.

6. The learned Judge, City Civil Court dismissed the Notice of Motion observing *inter alia* that the suit was essentially for injunction and not in respect of the determination of the tenancy rights.

7. Mr. Anekar, the learned Counsel for the Applicant, submitted that the learned Judge, City Civil Court did not read the Plaint in a meaningful manner. Inviting the attention of the Court to paragraph 2 of the Plaint, Mr Anekar would submit that the Plaintiff has categorically asserted that the heirs of the deceased tenant who have allegedly been residing in the suit property since the lifetime of the deceased-tenant are entitled to declare themselves as joint tenants.

8. However, the Plaintiff has, by resorting to clever drafting, refrained from seeking a declaration in that regard. Thus from the very statements in the Plaint itself, the suit is barred by the provisions of the Presidency Small Cause Courts Act, 1882.

9. I am afraid to accede to the aforesaid submission. Indeed the Plaint is required to be read in a meaningful and not formalistic manner. However, the Plaint must be read in such fashion as a whole. It is impermissible to dissect a particular sentence in the Plaint and read it torn out of context. As noted above, the substratum of the Plaintiff's claim is that, there was an arrangement between the Plaintiff and Defendant that each would occupy a portion of the suit premises; he has been residing in a portion of the suit premises; there is a common access and the Defendant has changed the lock and thereby obstructed the unrestricted access of the Plaintiff to the portion of the suit property which is in the occupation of the Plaintiff. The reference to the historical

fact that the Plaintiff and Defendant had been occupying the suit property during the lifetime of their father does not alter the nature of the suit.

10. Mr. Anekar attempted to salvage the position by canvassing a submission that there is no material to show that the Plaintiff is in possession of a portion of the suit property. That is essentially a matter which touches upon the merits of the claim.

11. At the stage of consideration of an application for rejection of the Plaint, it is trite, only averments in the Plaint are required to be considered along with the documents annexed with the Plaint. The contention that the Plaintiff is not in the actual occupation of a portion of the suit property, which is in the nature of defence of the Applicant, is not at all germane for the determination of the prayer for rejection of the Plaint.

12. For the forgoing reasons, there is no such infirmity in the impugned order as would warrant exercise of revisional jurisdiction.

13. The Application thus stands dismissed.

[N. J. JAMADAR, J.]