

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 197 OF 2026

Ibrahim Bruhansaheb Kokni ..Applicant

Versus

Dulhanbi Malangsaheb Kokni Deceased Through ...Respondents
Gafursaheb Malangsaheb Kokni and Ors

Mr. Vivek V Salunke, i/b Ajinkya Jaybhave, for the Applicant.
Mr. Alankar Kirpekar, with Shantanu Chandrate and Ayush Tiwari, i/b
Shantanu Chandrate, for the Respondents.

CORAM: N. J. JAMADAR, J.

DATE : 7th APRIL 2026

ORAL ORDER:

1. Heard the learned Counsel for the parties.
2. This Revision Application is directed against an order dated 26th February 2026, whereby the learned Civil Judge, Senior Division, Nashik, rejected an Application for rejection of the Plaint under the provisions of Order 7 Rule 11 of the Code of Civil Procedure, 1908 (“the Code”).
3. Mr. Salunke, the learned Counsel for the Applicant submitted that the rejection of the Plaint was sought on three grounds. First, the bar of limitation. Second, the bar under the provisions of Order 2 Rule 2 of the Code and third, the undervaluation of the suit claim. The learned Civil

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Judge has not properly appreciated contentions raised on behalf of the Applicant in the light of the pleadings.

4. Amplifying the submissions on each of the counts, Mr. Salunke would urge that, the question of bar of limitation is evident from the averments in the Plaint as it is the case of the Plaintiffs that a fraud was practiced in the year 1958 and the mutation entry was got certified. In regard to the bar under Order 2 Rule 2 of the Code, it was submitted that though the previous suit was withdrawn under the provisions of Order 23 Rule 1(3) of the Code, yet, the learned Civil Judge declined to grant permission to continue the instant suit, which was already instituted during the pendency of the earlier suit. The learned Civil Judge did not delve into the question of correct valuation of the suit claim, and failed to conduct the enquiry as mandated by the provisions contained in Sections 8 and 9 of the Maharashtra Court Fees Act, 1959.

5. Mr. Kirpekar, the learned Counsel for the Respondents-Plaintiffs would urge that, in the context of the averments in the Plaint and the stage at which the Application for rejection of the Plaint was filed, the learned Civil Judge has correctly evaluated the prayer for rejection of the Plaint and rejected the same by recording justifiable reasons. Therefore, there is no reason to interfere with the impugned order in exercise of the revisional jurisdiction.

6. On the count of limitation, apparently, the issue is one of mixed question of law and facts, in as much as the Applicant-Defendant is pressing into service, the theory of exclusion of the Plaintiff from the property and the bar of limitation under Article 110 of the Limitation Act, is sought to be pressed into service. Even if it is assumed that Article 110 of the Limitation Act, governs the suit in question the very questions whether there was exclusion and when the exclusion became known to the Plaintiff, require adjudication at the trial as those issues are rooted in facts. It is well settled that, in order to establish ouster as between co-sharers, there must be open assertion of hostile title by one of them to the knowledge of others and that mere non-participation in the profits by one party and exclusive occupation by the other is not conclusive. Thus, the question as to whether ouster has been proved to the knowledge of the party sought to be ousted warrants investigation into facts.

7. The bar of Order 2 Rule 2 of the Code is required to be appreciated in the light of the fact that the Court had granted leave to withdraw the first suit with liberty to institute a fresh suit, opining that the first suit was bound to fail on account of formal defect. In the impugned order, the learned Civil Judge has adverted to the manner in which the Plaint in the previous suit was drafted. In such a situation when the Court has granted leave to institute a fresh suit, the question

whether the bar under Order 2 Rule 2 of the Code would operate is required to be adjudicated at the trial.

8. So far as the question of undervaluation of the suit claim, the same can be adjudicated by the trial Court even at the stage of the passing of the final decree. That cannot be a ground for rejection of the Plaint; that too when the suit has reached an advanced stage.

9. Resultantly, no interference is warranted in the impugned order.

10. Mr. Salunke, in the alternative, also urged that though the Defendant has raised the issues of bar to the suit under Order 2 Rule 2 of the Code and the undervaluation of the Suit claim, the trial Court has not framed proper issues on the said points.

11. If that is the case, the Defendants may invoke the remedies as available in law.

12. Revision Application stands rejected.

[N. J. JAMADAR, J.]