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CASE COMMENTARY

MAHESH NAMDEV MAGAR & ANR. V. NIWAS SAKHARAM DHOKRE-PATIL & ORS.[1]

BOMBAY HIGH COURT | CIVIL REVISION APPLICATION NO. 432 OF 2023 | DECIDED: 15 JUNE 2026 | CORAM: JUSTICE M.M. SATHAYE

Oshin Sukhdeve

1. Introduction

This commentary examines the judgment of the Bombay High Court from the standpoint of the **Code of Civil Procedure, 1908 (CPC),** since the decision is, at its core, a procedural ruling rather than a final adjudication of property rights. The case arises from a partition suit (Special Civil Suit No. 135 of 2020) pending before the Civil Court at Kolhapur, in which certain defendants sought rejection of the plaint under **Order VII Rule 11 CPC**[2]. The Trial Court refused; the defendants invoked the High Court's revisional jurisdiction under **Section 115 CPC**[3]. The Bombay High Court dismissed the revision, holding that the plaint could not be rejected at the threshold.

2. Factual Matrix (Brief)

The plaintiff, Niwas, claimed a 1/15th share in ancestral property and sought partition, separate possession, cancellation of certain sale deeds (dated 30 December 2016, 1 June 2020, and 4 May 2022), and a perpetual injunction. Defendant Nos. 11 and 12 (the revision applicants) contended that the property was *Sakharam's* (the plaintiff's father's) separate, maternally-inherited property, that no cause of action existed, that the suit was barred by limitation, and that the plaintiff's legitimacy was doubtful. These contentions formed the basis of their application at Exhibit 96 under **Order VII Rule 11(a) and (d**).

3. The Core Procedural Provision: Order VII Rule 11 CPC

Order VII Rule 11 empowers a court to reject a plaint at the threshold, without a full trial, on specified grounds[4] — most relevantly here, clause (a) **no cause of action disclosed** and clause (d) **suit barred by law**. The provision exists to prevent obviously untenable litigation from

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[1]Mahesh Namdev Magar & Anr. v. Niwas Sakharam Dhokre-Patil & Ors., Civil Revision Application No. 432 of 2023 (Bom. H.C. June 15, 2026) (India).

[2]Code of Civil Procedure, 1908, No. 5, Acts of Parliament, 1908, sch. 1, Ord. VII, r. 11 (India).

[3]Code of Civil Procedure, 1908, No. 5, Acts of Parliament, 1908, § 115 (India).

[4]Code of Civil Procedure, supra note 2.

consuming judicial time. However, courts have consistently held that this power must be exercised with restraint: **the test is whether the plaint, read as a whole and taken as true, discloses a cause of action — not whether the plaintiff will ultimately succeed on merits**.

This case turns entirely on the correct application of that test. The revision applicants sought to convert what is essentially a merits-based defence (the property is separate, not ancestral) into a threshold bar under Order VII Rule 11. The High Court's central contribution is **reaffirming that such conversion is impermissible where the underlying facts are genuinely disputed.**

4. The High Court's Reasoning: Applying CPC Principles

(a) No Cause of Action — Rule 11(a)

The Court held that whether *Sakharam's* inherited share was "self-acquired" or remained part of an undivided family holding could not be determined merely from the pleadings. Since *Jayabai's* death opened succession to *Sakharam* and his sisters, and no formal partition by metes and bounds had occurred, the character of the property was a mixed question of fact and law, i.e., precisely the category of issue **Order VII Rule 11** is not designed to resolve. The Court relied on the Supreme Court's reasoning in *Kamala v. K.T. Eshwara Sa*[5] that whether property is "available for partition" is itself a factual inquiry requiring evidence.

Consequently, the plaint could not be said to disclose "no cause of action"; it disclosed a contested one, which is procedurally sufficient to survive Rule 11(a).

(b) Suit Barred by Law i.e., Rule 11(d): Limitation

On limitation, the defendants argued the 2016 sale deed challenge was time-barred under **Section 59 of the Limitation Act, 1963**[6] (three years from knowledge of the facts entitling cancellation). The plaintiff pleaded he discovered the deed only in April 2020, shortly before filing suit in May 2020. The Court held that the date of knowledge, not merely the date of the document, governs the limitation clock under Article 59, and since that date was disputed, limitation could not be said to be "*ex facie*" (apparent on the face of the pleadings) barred. This is a well-settled CPC principle: a plaint can be rejected under Rule 11(d) only when the bar is self-evident from the plaint itself, not when it depends on proof of contested facts.

(c) Multiple, Independent Causes of Action

Significantly, the Court noted that the suit did not rest on partition alone. It also sought declarations/cancellation of sale deeds alleging fraud, lack of consideration, and exploitation of an elderly and allegedly mentally vulnerable person, and raising the applicability of Section 52 of the Transfer of Property Act, 1882[7] (the doctrine of lis pendens) and a perpetual injunction. These were held to be substantive, independent prayers, not merely consequential to the partition claim. Even assuming (arguendo) that the partition claim was weak, the sale-deed challenge alone disclosed a triable cause of action, defeating any composite rejection of the entire plaint.

This aspect illustrates an important CPC principle often overlooked in Rule 11 applications: a plaint with multiple causes of action cannot be wholesale rejected merely because one of

[5]Kamala v. K.T. Eshwara Sa, (2008) 12 S.C.C. 661 (India).
[6]The Limitation Act, 1963, No. 36, Acts of Parliament, 1963, sch., art. 59 (India).
[7]The Transfer of Property Act, 1882, No. 4, Acts of Parliament, 1882, § 52 (India).

several reliefs is contestable and that the Court must assess whether any cause of action survives.

(d) Precedents Distinguished

The Court distinguished *Maktul v. Mst. Manbhari*[8] (arising under Punjab customary law, inapplicable here), and *Vishwambhar v. Sow. Sunanda*[9] (where the facts permitted a conclusive finding against coparcenary status at the threshold, unlike the present case). It accepted the principle in *Dahiben v. Arvindbhai Kalyanji Bhanushali*[10] , that the plainly vexatious or "bound to prove abortive" suits may be rejected ; but found it inapplicable, holding there is "no straight-jacket formula" for Rule 11(d) determinations; each case must be assessed on its own pleadings.

The defendants also invoked *Section 16 of the Hindu Marriage Act, 1955*[11] (which was incorrectly cited as Section 16 of the Hindu Succession Act, 1956 in the judgement), arguing that the plaintiff's alleged illegitimacy affected his rights; the Court held that this statutory protection for children of void or voidable marriages meant the allegation was not, by itself, decisive at the threshold stage.

5. The Scope of Revisional Jurisdiction (Section 115 CPC)

A second procedural dimension is the nature of revisional jurisdiction itself. The High Court emphasized that a revision under Section 115 CPC[12] is not a re-hearing on merits like an appeal; it is a supervisory jurisdiction confined to correcting jurisdictional errors or findings vitiated by perversity. Finding that the Trial Court had "carefully considered the pleadings" and reached a reasonable, non-perverse conclusion, the High Court held there was no ground for interference. This reaffirms the settled position that revisional courts must exercise restraint and not substitute their own view for a plausible one taken by the trial court, particularly at an interlocutory stage.

6. Significance and Doctrinal Takeaways

1. Threshold vs. Merits: The judgment is a clear illustration of the CPC's structural separation between the maintainability stage (Order VII Rule 11) and the merits stage (full trial). Courts must resist collapsing the two, however persuasive a defendant's factual narrative may appear on paper.

2. Mixed Questions of Fact and Law: Where the very existence of a cause of action (property character, limitation trigger) depends on disputed facts, Rule 11 cannot be invoked and that the matter must proceed to trial.

3. Composite Plaints: Multiple reliefs founded on distinct causes of action are severable for Rule 11 purposes; survival of one relief defeats blanket rejection.

4. Restraint in Revision: Reinforces that Section 115 CPC revisional powers are not a backdoor appeal, especially against interlocutory orders keeping a suit alive.

[8]Maktul v. Mst. Manbhari, A.I.R. 1958 S.C. 918 (India).
[9]Vishwambhar & Anr. v. Sow. Sunanda & Ors., Neutral Citation No. 2025:BHC-AUG:23638 (Bom. H.C., Aurangabad Bench) (India).
[10]Dahiben v. Arvindbhai Kalyanji Bhanushali (Gajra), (2020) 7 S.C.C. 366 (India).
[11]The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955, § 16 (India).
[12]Code of Civil Procedure, supra note 3; see also Kamala v. K.T. Eshwara Sa, supra note 5 (on the limited scope of revisional interference).

5. Order VII Rule 11 is Not a Trial Substitute: The decision to keep contentions "on merits" open for both sides underscore that dismissal of a Rule 11 application decides nothing about ultimate entitlement. It merely permits the litigation to proceed to evidence.

7. Conclusion

Read through the lens of the CPC, this judgment is a textbook reaffirmation of settled principles governing Order VII Rule 11 and Section 115: rejection of a plaint is an extraordinary, threshold remedy reserved for cases where non-maintainability is manifest from the pleadings themselves, and revisional courts must not disturb a trial court's plausible refusal to invoke that remedy. The Bombay High Court's dismissal of the revision application, while procedurally decisive, leaves the substantive property dispute i.e., ancestral character, validity of sale deeds, limitation, and legitimacy, entirely open for trial.

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2. Kamala v. K.T. Eshwara Sa, (2008) 12 S.C.C. 661 (India).
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4. Maktul v. Mst. Manbhari, A.I.R. 1958 S.C. 918 (India).
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1. Code of Civil Procedure, 1908, No. 5, Acts of Parliament, 1908, sch. 1, Ord. VII, r. 11 (India).
2. Code of Civil Procedure, 1908, No. 5, Acts of Parliament, 1908, § 115 (India).
3. The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955, § 16 (India).
4. The Limitation Act, 1963, No. 36, Acts of Parliament, 1963, sch., art. 59 (India).
5. The Transfer of Property Act, 1882, No. 4, Acts of Parliament, 1882, § 52 (India).