

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 120 OF 2015

Lt. Col. Pandharinath Dwarkanath
@ Dwaraku Adhav .. Petitioner

Versus

Satish Vishnu Wadane and others .. Respondents

Shri R. S. Deshmukh, Advocate for the Petitioner.
Shri Amol K. Gawali, Advocate for Respondent Nos. 1 to 8.

CORAM : S. V. GANGAPURWALA, J.

DATE : 19TH OCTOBER, 2015.

PER COURT :

. Mr. Deshmukh, the learned counsel for the petitioner strenuously contends that, while rejecting the application filed by the petitioner U/O VII Rule 11 of the Code of Civil Procedure (for short "C.P.C.") the Trial Court has failed to consider the pleadings of the plaintiff in its correct perspective. The plaintiff has omitted to plead material facts. In absence of the said pleadings, the relief as claimed by the plaintiff could not be granted. The suit is not maintainable in view of Sec. 38 of the Specific Relief Act. It is nowhere shown that the whole suit property is in possession of the plaintiff. Even as far as the relief of possession is concerned, the suit is filed on the basis of measurement dated 30th April, 2014. However, no measurement

map is annexed with the same. In absence of the same suit cannot proceed and plaint has to be rejected. The Court has to consider pleading in meaningful manner. If the plaintiff does not disclose clear by his right to sue, the Court can exercise its power U/O VII Rule 11 of the C. P.C. The learned counsel relies on the judgment of the Apex Court in a case of **T.Arivandandam Vs. T. V. Satyapal and another** reported in ***AIR 1977 SC 2421 (1)***.

2. Mr. Gawali, the learned counsel for respondents supports the order.

3. I have considered the submissions canvassed by learned counsel for both parties. The application is filed for rejection of plaint purportedly on the ground that relief U/Sec. 38 of the Specific Relief Act cannot be granted as it is not averred that the plaintiff is in possession of the entire suit property. So also possession is sought of the property pursuant to the measurement map dated 30th April, 2014. However, no measurement map is annexed with the same. In absence of the measurement map suit cannot proceed further.

4. The Court has observed that, along with plaint the plaintiff has annexed sketch showing the encroached portion of which possession is sought. The same purportedly is as per Order VII

Rule 03 of the Code of Civil Procedure.

5. While considering the application for rejection of plaint, the averments made in the plaint are required to be considered. The plaintiff has averred about the possession of the property being sought, so also injunction in respect of remaining property. Whether plaintiff would be in a position to prove his case is a different matter altogether, which cannot be considered at the time of determination of application U/O VII Rule 11 of the C. P. C.

6. Considering the above the revision is dismissed. No costs.

[S. V. GANGAPURWALA, J.]

bsb/Oct. 15