

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

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39 CIVIL REVISION APPLICATION NO. 135 OF 2015

SHIRISH MURLIDHAR DARKUNDE
VERSUS
THE STATE OF MAHARASHTRA THROUGH COLLECTOR
AHMEDNAGAR AND OTHERS

...

Advocate for applicant : Mr. Pathan Zafar M
AGP for Respondents-State: Mr. D. R. Korde
Advocate for Respondent 4: Autade Kailas B.

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CORAM : S. V. GANGAPURWALA, J.

DATE : 14th September, 2015

PER COURT :

1. The present respondent No.1 has filed a suit for multifarious reliefs i.e. the declaration that the suit land at clause 1-D of the plaint is acquired for rehabilitation so also for giving one 7/12 extract for different Gat numbers and for injunction.

2. The present applicant who is original defendant no.4 filed an application under Order 7 Rule 11 for rejection of Plaint basically on the ground that plaintiff does not have cause of action so also the suit is barred in view of the provisions of Maharashtra Revenue Jurisdiction Act. The said

application is rejected. Aggrieved thereby, the present revision.

3. Mr.Pathan, the learned counsel for the applicant submits that the Court, while rejecting the application of the present applicant for rejection of plaint, has failed to appreciate the provisions of Sections 4 and 11 of the Maharashtra Revenue Jurisdiction Act in its correct perspective. According to the learned counsel, section 4(D) of the said Act specifically bars the relief as claimed vide prayer clause (B) in the plaint. However, this aspect has not been considered by the court. The learned counsel submits that earlier also, the present plaintiff has filed RCS No.491 of 2011 which was pending before the Civil Judge, Junior Division, seeking injunction in respect of the same suit property. In view of the pendency of the earlier suit, the present suit is not tenable.

4. The learned counsel further submits that even remedies available under the Maharashtra Land Revenue Code could have been exhausted by the plaintiff with regard to 7/12 extract. However, without exhausting

the said remedy, civil suit is filed. Such a suit is not tenable.

5. The learned counsel relies on the judgment of learned Single Judge of this Court in case of **State of Maharashtra Vs. Bhikulal Mahadeo Agrawal, reported in 2015 (2) All. M.R. 282.**

6. Mr. Autade, the learned counsel for respondent No.4 supports the order.

7. The plaint cannot be rejected in part. Vide the present suit, multifarious reliefs are claimed. Prayer clause (A) deals with declaration that the property is already acquired under the Rehabilitation Act. The plaintiff is not seeking any further declaration that the authorities under the Rehabilitation Act are required to do particular thing. A simple declaration is sought that the said property is not available and the same is already acquired under the Rehabilitation Act.

8. As far as prayer clause (B) is concerned, the prayer is made for issuing consolidated 7/12 extract

of 30 R land from Gat No.48/1B and 10 R land of Gat No.48/2B. Vide prayer clause (C) injunction is sought.

For prayer Clause (B), the appellant could have approached the authorities under the Statute. However, as the plaint cannot be rejected in part and as the reliefs claimed in prayer Clauses (A) and (C) would be within the domain of civil court, the plaint certainly could not have been rejected.

9. As far as cause of action is concerned, a solitary sentence in the plaint does not constitute a cause of action. Bundle of facts in the plaint are relevant for considering the cause of action. The court has considered the said aspect.

10. Whether eventually the court will be in position to grant relief or not is another matter altogether which is not required to be considered at the time of entertaining the application for rejection of the plaint. For entertaining the application, the plaint only has to be read as a whole.

11. Considering the above, the impugned order needs

no interference. As such the Civil Revision Application is disposed of.

12. It is made clear that as far as merits of the contentions are concerned and about the relief that could eventually be granted by this Court, the parties are at liberty to raise the appropriate defence in that regard. No costs.

(S. V. GANGAPURWALA, J.)

JPC