

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

CIVIL REVISION APPLICATION NO. 20 OF 2015

Prabhawati Kalshya Vasave

.. Applicant

Versus

Jeharsing Alias Jaising Poslya and Another .. Respondents

Shri Amit S. Savale, Advocate for the applicant.

Shri Ajaykumar G. Magare, Advocate for the Respondent No. 1.

Shri A. N. Sabnis, Advocate for the Respondent No. 2.

CORAM : S. V. GANGAPURWALA, J.

DATE : 26TH AUGUST, 2015.

PER COURT :

1. The application filed under Order 7 Rule 11 is rejected. Mr. Savale, the learned counsel for the applicant states that, the suit is barred in view of Section 36 (a), (b) and (c) of the Maharashtra Land Revenue Code. These acts which are exclusively within the domain of the Authority as contemplated under Section 36 of the Maharashtra Land Revenue Code can not be entertained before the Civil Court. In light of that, the suit filed by the plaintiff was not tenable and the plaint ought to have been rejected. The learned counsel submits that, no alienation of tribal land without the permission of the Collector is permissible. In view of that, the suit itself was not maintainable, plaint ought to have been rejected.

2. Mr. Magare, the learned counsel for Respondent No. 1 supports the order.

3. Mr. Sabnis, the learned counsel for Respondent No. 2 supports the argument of the learned counsel for the applicant.

4. The suit is for specific performance of contract and for declaration and injunction and in alternate for refund of the earnest amount. The prayer itself says that, decree be granted after directing defendant to obtain permission from the competent Authority. The jurisdiction to grant permission to sell the tribal land certainly vest with the Authority as contemplated under Section 36 of the Maharashtra Land Revenue Code, the Civil Court is not going to grant permission. At the same time, the Civil Court is not precluded from entertaining the suit for specific performance of contract even in respect of restricted property. The decree can be passed subject to the grant of permission by the competent Authority. The Court has considered the said aspect.

5. In light of that, no case for interference is made out. Civil Revision Application is dismissed. No costs.

[S. V. GANGAPURWALA, J.]

sam/Aug. 15