

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

12. SA/78/2012

SHIVAJI CHAGANRAO KSHIRSAGAR
V/S
GANGADHAR MALHARRAO KSHIRSAGAR

Mr. B.R. Sontakke, Advocate for appellant.

CORAM : T.V. NALAWADE, J.
DATED : 21st September, 2015.

ORDER :

1. Heard the learned counsel for appellant. Seen the judgments delivered by the trial Court and the first appellate Court.

2. The suit was filed for relief of injunction. The defendant took stand that he had already sold the property and so, on the date of suit, he was not the owner and there was no cause of action for the suit. Only plaintiff gave evidence. It appears that it cannot be disputed that the defendant was not owner of the portion in respect of which there was the dispute. In view of these circumstances, it can be said that the plaint itself could have been rejected under Order VII, Rule 11 of Civil Procedure Code. But the trial proceeded and now the decisions are given on merits. However, both the Courts below have held that there was no cause of action for the suit. The said decision

will not come in the way of the plaintiff to proceed against the purchaser on the basis of cause of action, if any, is there against the purchaser. Thus, there cannot be any substantial question of law in the present matter.

3. In the result, appeal stands dismissed. There is liberty to the appellant to proceed against the purchaser, if there is cause of action.

[T.V. NALAWADE, J.]

ssc/