

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5646 OF 2014
WITH
CIVIL APPLICATION NO.2288 OF 2014

Deshmukh & Company (Publishers)
Pvt. Ltd. .. Petitioner
VS.
Shri. Ramchandra D. Tulpule & ors. .. Respondents

Mr. K. Y. Mandlik for the Petitioner & Applicant.
None for the Respondents.

CORAM : M. S. SONAK, J.
DATE : 13 FEBRUARY, 2015.

P.C. :-

1] This petition takes exception to the order dated 5 February 2014 made by the Small Causes Court at Pune, dismissing the petitioner's application under Order 7 Rule 11 of the Code of Civil Procedure (CPC) for rejection of the plaint.

2] The application made by the petitioner points out that respondent No.1/plaintiff was basically an executor of the Will made by Sulochanabai Deshmukh and it is only in that capacity that he was placed in possession of the suit property. After 12 years, the said respondent has instituted a suit seeking a declaration, *inter alia* that he has become the owner the owner of said property by way of adverse possession. There is also a prayer for possession of the

suit property, which is nothing but contradiction in terms. For all this, it has been submitted that the plaint deserves rejection by resort to the Rule 7 and Order 11 of the CPC.

3] The impugned judgment and order has basically declined the application on the ground that the issues have already been framed and therefore, it would be appropriate if the matter proceeds for evidence.

4] At the outset, learned counsel for the petitioner is right in that the application under Order 7 Rule 11 of CPC cannot be rejected merely on the ground that the issues have already been framed in the suit. However, upon perusal of the application under Order 7 Rule 11 of the CPC, it is seen that the petitioner had virtually pleaded its defence therein. No case has been made out to indicate as to how the suit, from the statement in the plaint appears to be barred under any law. In deciding the application under Order 7 Rule 11 of CPC, there is no scope to look into the defence of the parties. At this stage, the Court is required to go by the averments in the plaint as they stand.

5] If the averments in the plaint are examined, then there does not appear therein any statement on the basis of which it can be said that the suit is barred. The circumstance that the reliefs claimed are contradictory or that there is non-joinder of some parties are normally issues that cannot be gone into at the stage of consideration of an application under Order 7 Rule 11 of CPC. In the aforesaid circumstances, although it needs to be recorded that the impugned order is not happily worded or that the Small Causes Court has not applied the correct test, there is no case as such made out for rejection of the plaint by resort to the provisions contained in Order 7 Rule 11 of CPC. Accordingly, no case is made out to entertain the present petition and the same is dismissed.

6] However, it is directed that the 4th Additional Judge, Small Cause Court, Pune decides the Suit expeditiously and in accordance with law.

7] It is further clarified that this Court has not adjudicated on the merits of the matter and all contentions are expressly kept open.

8] In view of dismissal of the petition, civil application does not survive and is accordingly, disposed of.

(M. S. SONAK, J.)