

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**CIVIL REVISION APPLICATION NO. 727 OF 2014**

Puranik Builders Pvt. Ltd

Applicant

Vs

Padibai Vittahal Shinge and Ors

.. Respondents

Mr. P.K.Dhakephalkar, Senior Advocate, i/b Mr. Jaydeep Dev,  
Advocate for Applicant.

Mr. Sandesh D. Patil, Advocate for the respondents.

CORAM : R.G.KETKAR,J.

DATE : 12/08/2015

**PC:**

1. Heard Mr. P. K. Dhakephalkar, learned senior counsel for the applicant and Mr. Sandesh Patil, learned counsel for the respondents at length. On the motion made by Mr. Dhakephalkar, respondent no.5 is deleted from this Application as no relief is claimed against respondent no.5.

2. Rule. Mr. Patil waives service for the respondents. At the request and by consent of the parties, Rule is made returnable forthwith and Application is taken up for final hearing.

3. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), original defendant no.2 has challenged the Judgment and order dated 17.12.2013 passed by the learned Jt. Civil Judge, Jr. Dn., Thane, below Exhibit-14 in R.C.S.No.648 of 2013. By that order, the learned trial Judge rejected the application taken out by defendant no.2 under

Section 9-A of C.P.C.

4. In support of this application, Mr. Dhakephalkar submitted that respondents no.1 to 4, hereinafter referred to as 'plaintiffs' have instituted suit, inter alia, praying for declaration that they are the absolute owners of the suit property; for perpetual injunction restraining respondent no.5, hereinafter referred to as 'defendant no.1' and applicant, hereinafter referred to as 'defendant no.2', from entering into the suit property and/or from dispossessing the plaintiffs from the suit property. He submitted that during the pendency of the suit, the plaintiffs took out application for interim relief. Defendant no.2 filed application under section 9-A of C.P.C.

5. In paragraph 1 of the application, it is contended that the plaintiffs are the absolute owners of lands bearing Survey No.52, Hissa No.1, admeasuring 16R 4 prati, i.e. 1640 sq.meters, situate at village Mogarpada and Survey No.55, Hissa No.6A, admeasuring 12R. 3 prati, i.e. 1230 sq.meters, situate at village Kasarvadli, Tal & Dist. Thane (for short, 'suit lands'). They are no more agricultural lands as they are converted to non-agricultural use as per the orders dated 31.8.2007 passed by the Sub-Divisional Officer, Thane Division, Thane. The defendants also filed copies of the said orders for ready reference. Defendant no.2, therefore, contended that the suit is under valued as the valuation is not made as per the market value of the suit lands.

Defendant no.2 further contended that the suit is barred by law of limitation as also provisions of the Arbitration and Conciliation Act, 1996. The plaintiffs filed reply Exhibit-21 opposing the application.

6. By the impugned order, the learned trial Judge rejected the application on the premise that the application made by defendant no.2 is under Order VI, Rule 11. While considering such application, the Court has to consider only averments made in the plaint and the valuation made by the plaintiffs. The stand in the written statement or documentary evidence cannot be looked into. He submitted that the approach of the learned trial Judge was fundamentally erroneous. The application was not under Order VII, Rule 11 and is under section 9-A of C.P.C.

7. Mr. Dhakephalkar further submitted that in paragraph 13, the learned trial Judge considered the latest 7/12 Extract and observed that suit lands are susceptible to land revenue. It was further observed that even if the lands are converted into non-agricultural use, still it remains to be land susceptible to the land revenue. The said finding is without any basis.

8. He further submitted that as far as the issue of maintainability of suit under Section 8 of the Act is concerned, the learned trial Judge observed that the plaintiffs have not challenged any agreement pertaining to the suit property nor they have sought any declaration in respect thereof. Section 8

thereof does not come into play. As far as the issue of suit being barred by limitation is concerned, it was observed that if one of the reliefs claimed by the plaintiffs is within limitation, the suit cannot be dismissed on that ground.

9. On the other hand, Mr. Patil supported the impugned order. He submitted that while considering the issue of jurisdiction, the Court has to proceed essentially on the basis of averments made in the Plaint. He submitted that the 7/12 extract of the suit lands show that it is used for agricultural purpose and, therefore, it is susceptible to land revenue. The valuation made by the plaintiffs is correct.

10. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, defendant no.2 has filed the application under section 9-A of C.P.C. The learned trial Judge, however, proceeded on the premise that the application is under Order VII, Rule 11 of C.P.C. This is evident from the discussion of paragraph 11 of the impugned order. In my opinion, the approach of the learned trial Judge is fundamentally erroneous. In the impugned order, the learned trial Judge has not at all considered the orders dated 31.8.2007 by which the suit lands which were agricultural lands are converted to non-agricultural use. In paragraph 13, the learned trial Judge perused the 7/12 Extract and observed that in view of the latest 7/12 Extract, it

can be gathered that the suit lands are susceptible to land revenue and the valuation made by the plaintiffs is correct. It was further observed that even if the land is converted into non-agricultural use, still it remains to be land susceptible to land revenue. Prima facie, there is no basis for such findings. The learned trial Judge did not consider effect of the orders dated 31.8.2007.

11. In view thereof, the impugned order cannot be sustained and, as such, is liable to be set aside and accordingly it is set aside. The learned trial Judge is directed to deal with the contentions recorded herein as also other contentions that may be advanced by the parties and pass appropriate order. Hence, the application is disposed of in the following terms.

(i) Impugned order dated 17.12.2013 is quashed and set aside and Application Exhibit-14 in R.C.S. No. 648 of 2013 is restored to the file of the learned trial Judge. Learned trial Judge will bear in mind that the application is under section 9-A of C.P.C. and deal with all contentions recorded herein as also other contentions that may be advanced by the parties in accordance with law uninfluenced by the observations made herein. Parties are at liberty to lead evidence if they so desire. All contentions on merits are expressly kept open.

(ii) Parties agree that they will appear before the learned trial Judge on 1.9.2015 and the learned trial Judge is requested to

decide the application within three months from the date of appearance of the parties.

(iii) Rule is made absolute accordingly with no order as to costs.

Parties to act on the authenticated copy of this order.

(R.G.KETKAR, J.)