

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

CIVIL REVISION APPLICATION NO. 907 OF 2013

Satara District Nagarik
Sahakhari Patpedi Maryadit
Mumbai and Anr

Applicants

Vs

Pramod Laxman Chavan and
Ors.

.. Respondents

Mr. Ajit J. Kenjale a/w Mr. Rajesh Dharap, Advocate for Applicants.
Mr. Shailesh D. Chavan, Advocate for Respondents no. 1 and 2.
Mr. Ajinkya Palav i/b Mr P.J. Thorat, Advocate for Respondent no.3.

CORAM : R.G.KETKAR,J.
DATE : 13/07/2015

PC:

1. Heard Mr. Ajit Kenjale, learned counsel for the applicants, Mr. Shailesh Chavan, learned counsel for respondents no. 1 and 2 and Mr. Ajinkya Palav, learned counsel for respondent no.3 at length. On the oral application made by Mr. Kenjale, respondent no.4 is deleted from the present proceedings as Mr. Kenjale states that he is supporting the respondent and no relief is claimed against him. On the motion made by Mr. Kenjale, respondent no.4 is deleted from the present proceedings. Amendment shall be carried out forthwith.

2. By this Petition under Article 227 of the Constitution of India, original defendants no.1 and 2 have challenged the Judgment and order dated 16.6.2012 passed by the learned Civil Judge, Jr. Dn., Koregaon, below Exhibit 19 in Regular Civil Suit No.

22 of 2012. By that order, the learned trial Judge rejected the application made by the applicants, hereinafter referred to as 'defendants no.1 and 2', under Order VII, Rule 11 of C.P.C. for rejecting the plaint.

3. In support of this application, Mr. Kinjale submitted that respondents no.1 and 2, hereinafter referred to as 'plaintiffs', have instituted suit for declaration that the auction conducted by defendants no.1 and 2 on 6.1.2012 is illegal; for direction to defendants no. 1 and 2 accept Rs.2,56,000/- being highest bid amount and transfer share of defendant no.3 to them. He submitted that in view of the provisions of the Maharashtra Co-operative Societies Act, 1960 (for short, 'Act') as also the Maharashtra Cooperative Societies Rules, 1961 (for short, 'Rules'), the plaintiffs are precluded from challenging the validity of auction conducted by defendants no.1 and 2. In particular, in view of Section 163 (3) of the Act read with Rule 107 (11), the Civil Court has no jurisdiction to entertain and try the suit. He submitted that the auction was conducted after obtaining requisite certificate under section 101. Remedy of the plaintiffs is to invoke provisions of Section 154-A of the Act by filing Revision Application. He submitted that the learned trial Judge, however, rejected the application on the basis that the plaintiffs did not challenge the process of auction as also the suit is instituted claiming right under section 22 of the Hindu

Succession Act, 1956. In support of his submission, Mr Kenjale relied upon the decision of this Court in the case of Satguru Construction Co. Pvt Ltd Vs. Gr. Bombay Co-operative Bank Ltd, 2007 (3) Mh. L J. 843. He, therefore, submitted that the impugned order deserves to be set aside.

4. On the other hand, Mr. Chavan supported the impugned order and submitted that, in substance, the suit is instituted claiming right of preemption under Section 22 of the Hindu Succession Act and, therefore, no case is made out for invocation of powers under section 115 of C.P.C.

5. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record.

6. Plaintiffs have instituted suit on 20.1.2012 for declaration that the auction conducted by defendants no.1 and 2 on 6.1.2012 is illegal and is liable to be set aside (prayer clause (a)); for direction to defendants no.1 and 2 to accept Rs. 2,56,000/- being the highest bid amount and transfer of share of defendant no.3 to defendants no.1 and 2 (prayer clause (b)). As against this, the learned trial Judge observed in paragraph 4 that suit is for right of preemption under section 22 of the Hindu Succession Act. In my opinion, the learned trial Judge is not right in that regard. Perusal of prayer clauses (a) and (b) clearly shows that the plaintiffs have challenged the auction as also have sought

direction against defendants no. 1 and 2 to accept amount of Rs. 2,56,000/- being the highest bid amount and transfer share of defendant no.3 in their favour. Prima facie, the plaintiffs have challenged the auction as also for setting aside the auction in favour of defendant no.4. The learned trial Judge was, therefore, not justified in rejecting the application on the ground that the suit is for right of preemption under section 22. On this ground alone, the impugned order cannot be sustained and is liable to be set aside. Hence, Petition is disposed of in the following terms.

- (a) Impugned order dated 16.6.2012 is quashed and set aside.
- (b) Application Exhibit-19 is restored to the file of the trial Court for deciding it afresh in the light of observations made herein and in accordance with law.
- (c) All contentions of the parties on merits are expressly kept open. Rule is made absolute in the above terms, with no order as to costs.

(R.G.KETKAR, J.)