

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

CIVIL REVISION APPLICATION NO.1034 OF 2014

Mrs. Ferishte F. Mazda @

Mrs. Ferishte F. Chindhy

...Applicant

vs.

Dhondiba Pandharinath Khutwad & Ors.

...Respondents

Mr. Nitin P. Deshpande for the Applicant.

CORAM : R. M. SAVANT, J.

DATE : 5th MARCH, 2015.

PC. :-

The revisionary jurisdiction of this Court is invoked against the order dated 8th July, 2014 passed by the learned 14th Joint Civil Judge, Junior Division, Pune, by which order the application Exhibit 'L' filed invoking Order 7 Rule 11 of the Code of Civil Procedure came to be rejected. The suit in question being Regular Civil Suit No.6769/2012 has been filed by the Plaintiff for a declaration that he has become owner by adverse possession. The second relief sought is by way of an injunction against the Defendants restraining them from disturbing the Plaintiffs possession. The suit is founded on the fact that pursuant to an oral Agreement to Sale, the Plaintiff was put in possession on 1st February, 1980. It is further averred that the Plaintiff has continued in possession since thereafter. However, on 28th February, 1988 the

Defendants objected to the entry made in favour of the Plaintiff in the revenue record. The cause of action for filing the suit is stated in paragraph 11 of the plaint wherein it has been stated that on 9th October, 2012 an attempt was made to dispossess the Plaintiff and interfere with his possession by the Defendants through some muscle-men. The plaint also refers to the eviction proceedings. In paragraph 7 the proceeding initiated by the Defendants under section 84 of the Bombay Tenancy and Agricultural Lands Act, 1948 is referred to. The Defendants filed the instant application Exhibit 49 under Order 7 Rule 11 of the Code of Civil Procedure and have sought the rejection of the plaint on the grounds mentioned in the said application. The Trial Court considered the said application and has by the impugned order dated 8th July, 2014 rejected the same. The Trial Court has rejected the said application on the ground that whilst considering an application under Order 7 Rule 11 only averments in the plaint are to be considered and the defence is not material. The Trial Court observed that the contentions raised in the application are touching the merits of the case which can be considered at the time of the trial.

2] A perusal of the plaint indicates the cause of action for filing the suit whereas a perusal of the application Exhibit 49 indicates that the contentions are raised by the Defendants as regards the merits of the

case of the Plaintiff and the Plaintiffs entitlement to the relief sought in the plaint. In my view, the order passed by the Trial Court rejecting the application by holding that in the application, contentions regarding the merits of the case have been raised cannot be found fault with as it is well settled that whilst considering an application under Order 7 Rule 11 only the averments in the plaint are material. As indicated above, the averments in the plaint ex facie disclose the cause of action for the Plaintiff to file the suit. The learned counsel appearing on behalf of the Petitioner seeks to place reliance on the judgment of the Apex Court reported in *1977 AIR (SC) 2421 in the matter of T. Arivandandam V/s. T. V. Satyapal*. In the said case, it seems the Apex Court was concerned with litigation which was vexatious and meritless. Such is not the case in the instant matter, hence, the judgment of the Apex Court in T. Arivandandam's case would have no application. No case for exercise of the revisionary jurisdiction of this Court is therefore made out. The Civil Revision Application is accordingly dismissed.

(R. M. SAVANT, J.)