

ingale

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 1089 OF 2014

Mr.Nadeem Rais Ahmed .. Applicant

Vs.

Mr.Lahudas Ananta Gawali .. Respondent

Mr.Tushar V. Dahibawkar i/b Dahibawkar &Co., Advocate for the Applicant.

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

CORAM : R. G. KETKAR, J.

DATE : 20th JULY, 2015

P.C. :

Heard Mr.Tushar V. Dahibawkar, learned Counsel for the applicant and Mr.Sandesh D.Patil, learned Counsel for the respondent at length.

2. By this Petition, under Section 115 of Code of Civil Procedure, 1908 (for short 'C.P.C.'), original defendant has challenged the judgment and order dated 05/08/2014 passed by the learned Joint Civil Judge, Junior Division, Karjat below Exhibit 17 in Regular Civil Suit No. 103 of 2013. By that order, the learned trial Judge rejected the application filed by the defendant under Order 7 Rule 11(a) & (d) of the C.P.C.

3. In support of this application, Mr.Dahibawkar strenuously contended that respondent, hereinafter referred to as

plaintiff has instituted Suit for declaration and perpetual injunction and he has valued the Suit at Rs.1,000/- and accordingly paid court fee stamp of Rs.200/-. He has taken me through paragraphs 1 to 6 of the plaint and submitted that plaintiff claims to be cultivating the suit land and taking income therefrom from last 30 years. The plaintiff is aged about 42 years and therefore, in the first place, assertions made in paragraph 2 of the plaint on the face of it, are incorrect. Secondly, by prayer clause (b), the plaintiff has sought declaration that property described in schedule 'A' is in his possession and that he is cultivating it since long. In other words, plaintiff has claimed declaration of ownership. The defendant has purchased the property in dispute by registered sale deed dated 31/07/2012 from father of the plaintiff for a valuable consideration of Rs.40 lacs. The plaintiff, therefore, has to value the Suit on the basis of consideration shown in the sale deed accordingly. Thus, Suit is clearly undervalued. The plaint is liable to be rejected under Order 7 Rule 11(b) of the C.P.C. He submitted that Suit for declaration is barred by Article 58 of the Limitation Act. The plaint is liable to be rejected under Order 7 Rule 11(d). Lastly, plaint is liable to be rejected under Order 7 Rule 11(a) as Suit is instituted without any cause of action. No particulars are given in paragraph 12 of the plaint.

4. On the other hand, Mr.Patil supported the impugned order. He submitted that as far as the ground under Order 7 Rule

11(a) is concerned, the learned trial Judge has considered this aspect in paragraph 8. As far as ground of undervaluation is concerned, the learned trial Judge has considered this aspect in paragraph 15. He submitted that while considering application under Order 7 Rule 11, the Court has to only consider averments made in the plaint and not the defence set up by the defendant. He, therefore, submitted that 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. As far as the ground that plaint does not disclose the cause of action as contemplated by Order 7 Rule 11(a) is concerned, the learned trial Judge has observed in paragraph 8 that plaintiff claims to be cultivating the suit land for more than 30 years and since then, he is in possession of the property in dispute and cultivating the same. On 01/12/2012, the defendant entered in the suit property and demolished his constructed house. The plaintiff has also lodged complaint on 27/10/2013. The learned trial Judge, therefore, observed that these assertions are sufficient to show cause of action and therefore, plaint cannot be rejected under Order 7 Rule 11(a) of C.P.C.

6. As far as the ground of undervaluation as contemplated by Order 7 Rule 11(b) is concerned, the learned trial Judge has

observed that in the first place, plaintiff was not party to the alleged sale deed executed on 31/07/2012 by his father in favour of defendant. Secondly, in paragraph 17, the learned trial judge has observed that Suit is not for possession and is filed for declaration and injunction. The learned trial Judge, therefore, held that plaint cannot be rejected under Order 7 Rule 11(b) of C.P.C. Apart from that, the plaintiff has not prayed for avoidance of the sale deed. It is not necessary for the plaintiff to value the Suit as per Section 6(iv) (ha) of the Maharashtra Court Fees Act.

7. Mr. Dahibawkar relied upon the decision of this Court in the case of **G.V.Iyengar Vs. A.R.Sampathkumar, 2008(3) Mh.L.J.621** and submitted that plaint is liable to be rejected under Order 7 Rule 11(b) of C.P.C. In that case, the learned Single Judge of this Court extracted prayers in paragraph 3 of the report. In paragraph 5, it was observed that plaintiff claims declaration that he is in possession as a legal heir of deceased Dr.A.R.Gopal Ayengar and as member of the Society which means that he claims declaration that he is in possession as owner of the property. In paragraph 9, the learned Single Judge of this Court considered the submission advanced on behalf of plaintiff that he did not claim declaration of ownership nor he claims possession. In paragraph 10, the learned Single Judge observed that plaintiff sought declaration that he is entitled to possession as a legal heir of original owner. It is in that

context, the learned Single Judge held that Civil Court has no jurisdiction as far as prayer clauses (a) and (c). Suit has to be valued for the purpose of court fee under Section 6(iv)(d) of the Maharashtra Court fees Act.

8. In the present case, plaintiff has not sought declaration of ownership as also possession of the property in dispute. The plaintiff has sought perpetual injunction restraining the defendant from dispossessing him from the suit property as also for declaration that he is continuously cultivating the suit land. In view thereof, decision in the case of **G.V.Iyengar** (*supra*) does not advance the case of the defendant. In the light of above discussion, no case is made out for invocation of powers under Section 115 of C.P.C. Hence, Application fails and the same is dismissed.

(R. G. KETKAR, J.)