

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

CIVIL REVISION APPLICATION NO.1113 OF 2014

Mrs. Sunali Roopkumar Rathod : Applicant
versus
Sammeer S/o. Jitendra Sheth and anr. : Respondents.

Mr. Shyam D Dewani for the Applicant.
Mr. Shardul Singh with Mr. Ashish Rao i/by M/s. M & M Legal Ventures for
the Respondent No.1.

CORAM : R. M. SAVANT, J.
DATE : 28th January 2015

P.C.

1 The revisionary jurisdiction of this Court under Section 115 of the Code of Civil Procedure is invoked against the order dated 25/11/2014 passed by the learned Civil Judge, Junior Division, Vadgaon Maval by which order the Application (Exhibit 30) for rejection of the plaint filed by the Applicant herein i.e. the original Defendant No.1 came to be rejected.

2 The suit in question being Regular Civil Suit No.279 of 2013 has been filed simplicitor for injunction by the Respondent No.1 herein i.e. the original Plaintiff. The subject matter of the suit is the suit property being Bungalow No.20, Raheja Hill Resort, Tungarli village, Lonavala. It is the case of the Plaintiff as evidenced by the averments made in the plaint that the suit premises were purchased sometime in the year 1995 pursuant to an Agreement for Sale dated 25/04/1985 signed and executed between his father who was

the Karta of the HUF and one Unique Estate Development Co. Ltd. It is the case of the Plaintiff that the consideration for the said suit premises was paid partly from the HUF bank account of his father, who is since deceased, and partly from the personal account of the Plaintiff which he held jointly with the deceased i.e. his father. It is further the case of the Plaintiff that the suit premises have also been reflected in the wealth tax assessment of the HUF of the deceased as the property of the HUF. It is the case of the Plaintiff that the said wealth tax assessment statements were forcibly taken in her possession by the Defendant No.1 who is his sister. It is further the case of the Plaintiff that after the death of his father he is the sole male member of the said HUF and therefore he is now the Karta of the said HUF. It is the case of the Plaintiff that since the suit premises were the property of the said HUF, he is entitled to a share in the suit premises as Karta of the said HUF. The plaint thereafter refers to the application made by the Defendant No.1 for getting her name entered in the record of the Lonavala Municipal Council. The plaint also refers to the fact that on one occasion the Defendant No.1 even sent her own security guards to take control and possession of the suit premises and the said security guards threatened and restrained the Plaintiff from entering the suit premises. It is further mentioned in the said paragraph that the Plaintiff had to file a complaint with the Lonavala Police Station pursuant to which the Plaintiff got back the possession of the suit property. Founded on the said facts, it is the case of the Plaintiff that his possession of the suit property is in imminent

danger and peril from the Defendant No.1. It is required to be noted that in the clause relating to cause of action it has been averred that the cause of action has arisen when the Defendant No.1 tried to dispossess the Plaintiff from the suit premises and it continues to arise every day thereafter till the filing of the present suit. Thereafter the substantive relief sought is for permanent injunction restraining the Defendant No.1, her agents, servants or any person claiming through her from dispossessing the Plaintiff from the suit premises being Bungalow No.20, Raheja Hill resort, Tungarli Village, Lonavala.

3 In the said suit, the Plaintiff filed an application for temporary injunction. The said application for temporary injunction was founded virtually on the same facts as pleaded in the plaint, the Defendant No.1 filed her reply to the said application for temporary injunction and the said reply disputed the case of the Plaintiff that the said property was the property of the HUF of the father of the Plaintiff and the Defendant No.1. The Defendant No.1 set up the defences that the said suit property was the exclusive property of her father and that she was gifted the said property by a Gift Deed and thereafter the property was also bequeathed to her by the Will dated 11/01/2013 executed by her father. The Defendant No.1 also disputed the case of the Plaintiff in so far as possession is concerned.

4 In so far as the Application for injunction is concerned, it appears

that the Trial Court had granted injunction vide order dated 25/11/2014, the said order has been challenged by the Defendant No.1 in the Lower Appellate Court i.e. the District Court, Pune and the Appeal it seems is as yet pending and it seems that the parties have been directed not to enter in the suit property. This is in so far as the application for temporary injunction is concerned.

5 In the instant suit, the Defendant had also filed application (Exhibit 30) invoking Order VII Rule 11 of the Code of the Civil Procedure questioning the maintainability of the suit on the ground that there was no cause of action for the Plaintiff to file the suit. The maintainability of the suit is also questioned on the ground that without seeking a declaration the suit as filed simplicitor for injunction was not maintainable.

6 The Trial Court adjudicated upon the said application (Exhibit 30) and by the impugned order dated 25/11/2014 has rejected the same. The Trial Court was of the view that since the Plaintiff has filed the suit in question for injunction and on an apprehension that his possession would be disturbed, it could not be said that there is no cause of action for filing the suit. The Trial Court has also referred to the order passed under Section 145 of the Criminal Procedure Code By the Tahasildar, Maval and has recorded that it cannot be said that the suit does not disclose the cause of action and that the

maintainability of the suit cannot be questioned under Order VII Rule 11 of the Code of Civil Procedure. The Trial Court as indicated above has by the impugned order dated 25/11/2014 rejected the Application (Exhibit 30).

7 The learned counsel appearing on behalf of the Applicants Shri Dewani would contend that in the light of the fact that the Defendant No.1 has pleaded about the Gift Deed as also the Will Deed in the reply, the suit filed by the Plaintiff simplicitor for injunction was not maintainable without seeking declaration in respect of the said documents. The learned counsel for the Applicants sought to place reliance on the judgment of the Apex Court reported in AIR 2008 SC 2033 in the matter of Anathula Sudhakar Vs. P Buchi Reddy (Dead) by L.Rs. & ors., as also the judgment of a learned Single Judge of this court reported in 2012 (3) Mh. L.J. 937 in the matter of Abdul Wahid Vs. Manish Hansraj Chandaria & Anr, the judgment of a learned Single Judge of this Court in Writ Petition No.6260 of 2013 in the matter of Sarika Mahendra Surekha V/s. Kusumlata Rajkumar Surekha & Anr. The learned counsel for the Applicant would also contend that on the basis of the subsequent event of the order under Section 145 of the Criminal Procedure Code being passed in favour of the Defendant No.1, the suit as filed is not maintainable and in support of the said contention, that on the basis of the subsequent event, the suit can be dismissed sought to place reliance on the judgment of the Apex Court reported in 2004(11) SCC 168 in the case of

Shipping Corporation of India Ltd v/s. Machado Brothers & ors, as also judgments in *Anathula Sudhakar's case* (supra), *Abdul Wahid's case* (supra) and *Sarika Mahendra Surekha's case* (supra).

8 Per contra, the learned counsel for the Respondent No.1 would contend that in so far as the Application under Order 7 Rule 11 is concerned, the averments in the plaint are only to be taken into consideration and not the defences in the written statement, and if the averments are so taken into consideration, then it cannot be said that there is no cause of action for the Plaintiff to file the suit. The learned counsel appearing for the Respondent No.1 would quickly take me through the averments in the affidavit in reply filed by the Defendant No.1 wherein the Defendant No.1 has made a statement in respect of the factum of possession of the Plaintiff. The learned counsel for the Respondent No.1 would contend that in view of the apprehension of the disturbance of his possession by the Defendant No.1 that the Plaintiff has filed the suit in question. The learned counsel for the Respondent No.1 would contend that in so far as the aspect of possession is concerned, the Court is not required to go into the title to the property in question, at the stage of consideration of an application for temporary injunction.

9 Having heard the learned counsel for the parties, I have considered the rival contentions. As indicated above, the instant Application

(Exhibit 30) is filed invoking Order VII Rule 11 of the Code of Civil Procedure on the ground that there is no cause of action for the Plaintiff to file the suit in question as also on the ground that the suit simplicitor for injunction is not maintainable. The gist of the averments in the plaint have been adverted to in the earlier part of this order. It is the case of the Plaintiff that the suit property was the property of the HUF of his father and after the death of his father he being the sole surviving male member has become the Karta of the HUF and therefore entitled to a share in the property. The question is as regards the maintainability of the suit which is the question put up on behalf of the Defendant No.1. Though various defences are sought to be taken on behalf of the Defendant No.1 it is not necessary for this Court to go into the said aspect at this stage as for consideration of the application only the averments in the plaint are to be considered. As indicated above, the above suit is founded on the fact that the Plaintiff is in possession and that his possession is being disturbed.

10 Now coming to the judgment of the Apex Court in ***Anathula Sudhakar's case*** (supra), the Apex Court has culled out or crystallized the facts in which a suit can be filed for simplicitor injunction and the facts in which a suit is required to be filed for both the declaration and injunction. In the instant case as indicated above the Plaintiff lays a claim to the suit property on the basis of it being the property of the HUF of his father. Hence the Plaintiff

has sought to set up his right in respect of the suit property on the said basis. The fact that the Plaintiff is the brother of the Defendant No.1 is not in dispute. Hence it cannot be said that the suit has been filed by a person who has no semblance of any right or connection with the suit property. In my view, therefore, having regard to the principles which have been culled out by the Apex Court, the suit as filed simplicitor for injunction in the present case would be maintainable.

11 In so far as the judgment of a learned Single Judge of this Court in *Abdul Wahid's case* (supra) is concerned, the facts in the said case stand apart from the facts of the present case as in the said case the Plaintiff was claiming possession on the basis of part performance of the agreement for sale. In so far as the judgment in *Sarika Mahendra Surekha's case* (supra) is concerned, the fact situation in the said case was totally different than the fact situation in the present case, as no objection to the maintainability of the suit on the ground that a suit simplicitor for injunction without claiming declaration was not maintainable, was raised by other side in the said case.

12 Now coming to the aspect of the order under Section 145 of the Cr.PC. Which is passed by the Tahasildar, Maval, the scope of the inquiry under the said provision is limited and is with a view to see to it that there is no breach of peace on site. Ultimately it is in the civil proceedings that the rights

of the parties are decided. Hence the basis of the said order being in favour of the Defendant No.1 cannot be impinge upon the maintainability of the suit. Whether the Plaintiff is entitled to the reliefs sought in the suit is another matter which the Trial Court would ultimately have to decided at the hearing of the suit, but at this stage, it cannot be said that the suit as filed is not maintainable. The judgments (supra) cited in support of the assertion that on account of the subsequent event the suit is required to be dismissed therefore have no application. In that view of the matter, this Court does not find any error of jurisdiction committed by the Trial Court or any other illegality or infirmity for this Court to interdict in its revisionary jurisdiction. The above Civil Revision Application is accordingly dismissed. Needless to state that the observations made in the instant order are only for consideration of the order passed under Order VII Rule 11 of the Code of Civil Procedure, the suit in question would undoubtedly be decided on its own merits and in accordance with law.

[R.M.SAVANT, J]