

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

CIVIL REVISION APPLICATION NO. 518 OF 2016

Gram Panchayat Alsand

..Applicant

Vs

Shrimati Yasoda Murlidhar Sutar
and Ors

.. Respondents

Mr.Umesh Mankapure, Advocate for Applicant.

Mr.Mahindra B. Deshmukh, Advocate for Respondents no. 1 to 5.
Mr. Yogesh Dabke, A.G.P for Respondents no. 6 and 7.

CORAM : R.G.KETKAR,J.
DATE : 28/11/2016

PC:

1. Heard Mr.Umesh Mankapur, learned counsel for the applicant, Mr.Mahindra Deshmukh, learned counsel for respondents no. 1 to 5 and Mr. Yogesh Dabke, learned A.G.P for respondents no. 6 and 7 at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant, hereinafter referred to as 'defendant no.1', has challenged the Judgment and order dated 5.2.2016 passed by the learned Civil Judge, Senior Division, Sangli below Exhibit 18 in Regular Civil Suit No.139 of 2015. By that order, the learned trial Judge rejected the application made by defendant no.1 under Order VII, Rule 11(a) and (d) of C.P.C.

3. In support of this Application, Mr. Mankapure has taken me through plaint of Regular Civil Suit No. 202 of 2013 filed by

plaintiff no.1-Ravindra Murlidhar Sutar and plaintiff no.2-Rajesh Prabhakar Jadhav against defendant no. 1 herein. The plaintiffs therein claimed possession over the properties, more particularly described in paragraph 1A, 1B and 1C of the plaint. He submitted that pending the suit, the plaintiffs therein filed application Exhibit-5 which was rejected by the learned trial Judge. Aggrieved by that decision, the plaintiffs preferred Misc. Civil Appeal. The learned Ad-hoc District Judge partly allowed Appeal and restrained defendant no.1 from causing obstruction to possession of plaintiff no.1 over the Gram-Panchayat property no.280, situate at village Alsand, Taluka-Khanapur, District-Sangli, more particularly described in Property Register Extract of Gram Panchayat No. 280. He submitted that the learned District Judge allowed the injunction application only in respect of the property described in paragraph 1B of the plaint. The plaintiffs therein instituted Writ Petition No. 4489 of 2015 in this Court. By order dated 5.5.2015, this Court dismissed the writ petition.

4. Mr. Mankapure submitted that thereafter the plaintiffs have instituted the present suit in respect of the same properties. Apart from claiming perpetual injunction, they have also claimed declaration of their ownership in respect of suit property. He submitted that the learned trial Judge rejected the application filed by defendant no.1 under Order VII, Rule 11(a) and (d). He invited my attention to paragraph 12 of the impugned order and

submitted that the learned trial Judge observed that the proceedings are pending in this Court. He submitted that basically the said finding is contrary to record. Appeal preferred by the plaintiffs was partly allowed on 25.3.2015 and injunction was issued only in respect of property 1B. Writ Petition was dismissed on 5.5.2015. Thus, the proceedings were not pending in this Court when the impugned order was passed on 5.2.2016. In any case, the learned trial Judge should have considered the order of the District Court partly allowing the Appeal preferred by the plaintiffs. He further submitted that perusal of paragraphs 6 and 7 of the present suit clearly shows that illusory cause of action is set up. He, therefore, submitted that application requires consideration.

5. On the other hand, Mr. Deshmukh supported the impugned order. He submitted that defendant no.1 had applied to defendant no.2 for police protection for taking possession of the suit property by issuing letter dated 13.1.2015. Plaintiffs got copy of that order on 19.1.2015. He has taken me through paragraphs 6 and 7 of the plaint to contend that in view of subsequent events, fresh cause of action accrued to the plaintiffs. Apart from that, the present suit is instituted by plaintiff no.1-Yashodha Murlidhar Sutar, plaintiff no.2- Rajendra Murlidhar Sutar, plaintiff no.4-Rupendra Murlidhar Sutar who are not plaintiffs in that earlier suit. He, therefore, submitted that the

learned trial Judge rightly rejected the application made by defendant no.1.

6. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, for the reasons recorded in paragraph 12, the learned trial Judge has rejected the application. Paragraph 12 reads thus:

“12. The main contention of the defendants is the cause of action of the previous suit bearing R.C.S. No.202 of 2013 and cause of action of this suit is the same. In the present case in paragraph 6 it is specifically pleaded by the plaintiffs that though the appeal is pending before the Hon'ble High Court, the defendants Grampanchayat had applied before defendant no.2 for police protection without giving opportunity, defendant no.2 has given order to defendant no.3 and Tahsildar to take the possession of the suit property and on the basis of said order they tried to obtain possession by issuing letter dated 13.1.2015. When the plaintiffs get the copy of that order on 19.1.2015 they came to know defendant no.2 has given order to defendant no.3 for taking possession and it seems to be a new cause for the present suit which is not hit under Order II rule 2 of C.P.C. After minutely reading the plaint, it is crystal clear that averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred by any law. On these background, at this prima facie stage, without going into merits of the case, it cannot be said that defendants are entitled to relief of rejection of plaint as against them. Therefore, I answer point no.1 in the affirmative, point no.2 in the negative and pass the following order.”

7. Perusal of paragraph 12 clearly shows that the learned trial Judge proceeded on the premise that the proceedings are pending in this Court. To say the least, the said finding is factually incorrect and contrary to record for the reasons already indicated

earlier. The learned trial Judge also did not consider the fact that as prima facie the defendants are found in possession of property described in paragraph 1A and 1C of the plaint, injunction was issued in favour of the plaintiffs only in respect of property described in paragraph 1B of the plaint. In view thereof, the impugned order cannot be sustained and as such is liable to be set aside, thereby, directing the learned trial Judge to decide application Exhibit-18 afresh. Mr. Deshmukh, after arguing the application for some time, also consented for setting aside the impugned order and directing the trial Court for deciding the application afresh.

8. In view thereof, the impugned order dated 5.2.2016 is set aside. Application Exhibit-18 is restored to the file of the trial Court. The said application shall be decided afresh in the light of the observations made herein and in accordance with law. All contentions of the parties on merits are expressly kept open. Order accordingly.

(R.G.KETKAR, J.)