

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 13909 OF 2017

BALAJI NAROJI KADAM
VERSUS
NARHARI VIKRAMJI KADAM AND OTHERS

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Advocate for Petitioner : Mr Tungar Nikhilesh K.
AGP for Respondents: Mr. P N Kutti

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CORAM : V.K. JADHAV, J.
Dated: December 04, 2017

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PER COURT :-

1. I do not find any substance in this writ petition.
2. Petitioner/original defendant no.3 has filed an application Exh.34 in R.C.S. No.156/2016 under Order 7 Rule 11 read with section 151 of the Civil Procedure Code for rejection of the plaint on the ground that, respondents/plaintiffs have no locus to institute the suit for mandatory injunction directing the revenue authorities to take entry with regard to the acquisition of the land, in the 7/12 extract in respect of the gat no. 265 and to carry out necessary corrections accordingly.

3. On perusal of the plaint and relief claimed in the suit, it appears that, though petitioners/plaintiffs have arrayed the State of Maharashtra and the Tahsildar as party defendants, sought a decree of perpetual injunction against the petitioner/original defendant no.3 restraining him thereby from causing any obstruction and interference into the peaceful possession and enjoyment of the plaintiff in respect of land survey No.40/1, Gat No.265, perpetually. It thus appears that respondents/plaintiffs have made a principal prayer against the petitioner/original defendant no.3 and further sought mandatory injunction directing the State and Tahsildar to take necessary entries of the acquisition of 9 R land from the suit land gat no. 265 in the 7/12 extract and delete the acquired area from the holding of present petitioner/defendant no.3.

4. In view of the above, I do not find that the provisions of Order 7 Rule 11 can be made applicable and the plaint is thus liable to be rejected. Even though, efficacious remedy is available for correction of

the entries in the revenue record, still then, alongwith the prayer for a decree of perpetual injunction against the present petitioner, respondent/plaintiff can seek mandatory injunction in respect of those entries as ancillary relief. Petitioner/original defendant no.3 could have filed an application under section 9A Order 14 Rule 2 of Civil Procedure Code, however, even then, the application is not maintainable under the said provisions simply for the reason that respondents/plaintiffs have sought principal prayer against the petitioner/defendant no.3 for a decree of perpetual injunction. In any case, this writ petition is devoid of any merit. Writ Petition accordingly dismissed. No costs.

(V.K. JADHAV, J.)

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