

Mr. Rahul S. Kate for Applicants.

P.C. :

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicants, hereinafter referred to as defendants No.1 to 3, have challenged the judgment and order dated 19.07.2016 passed by the learned Joint Civil Judge, Junior Division, Indapur below exhibit-30 in Regular Civil Suit No.281 of 2008. By that order, the learned trial Judge rejected the application made by the defendants No.1 to 3 under Order VII, Rule 11(a) of C.P.C.

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entry No.1201. Out of the property that fell to the share of the plaintiff, he had sold some area to Dattatraya, Sadhu Tulshiram and Subhadra Sitaram Shinde. In paragraph 6, plaintiff has alleged that Maruti Shivram Sonawane orally agreed to sell remaining Gat No.284 and 283 at the market rate of Rs.5,000/-. Accordingly, plaintiff had paid Rs.1,000/- as earnest money in the presence of witnesses and possession was handed over to him. He submitted that even no date of oral agreement is mentioned in paragraph 6. He submitted that the plaint does not disclose cause of action, and therefore, the learned trial Judge should have allowed the application made by defendants No.1 to 3.

4. In support of his submissions, he relied upon the decision of the Apex Court in ***Church of Christ Charitable Trust and Educational Charitable Society Vs. Ponniamman Educational Trust***, (2012) 8 SCC 706, and in particular paragraphs 10 to 12 thereof. He submitted that in paragraph 12, the Apex Court referred to the decision of ***T. Arivandandam Vs. T. V. Satyapal***, (1977) 4 SCC 467. He submitted that applying the principles laid down in these decisions, this is eminent case to dismiss the Suit at the threshold.

5. I have considered the submissions advanced by Mr. Kate. I have also perused the material on record. In the case of ***Church of Christ Charitable Trust and Educational Charitable Society*** (*supra*), in paragraphs 10 and 11, the Apex Court has observed that power under Order VII, Rule 11 can be exercised at any stage of the Suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial. In paragraph 12, the Apex Court referred to the decision of ***T. Arivandandam*** (*supra*). In that case, eviction proceedings were initiated against the second respondent before the Apex Court. Second respondent contested the

eviction proceedings and the said proceedings were decided against him. Aggrieved by that decision, he preferred appeal, which was dismissed. Second respondent moved revision petition, which was summarily rejected by the High Court. Second respondent was given six months time to vacate the premises. After expiry of six months, second respondent moved application for time to vacate. Petitioner, son of the second respondent, instituted Suit for declaration that the order of eviction, confirmed upto the High Court, was obtained by fraud and collusion. When this fact was brought to the notice of the High Court during the hearing of prayer for extension of time to vacate, the learned Judge of of the High Court persuaded the landlord to give more time for vacating the premises on the basis that the suit instituted would be withdrawn by the petitioner. After expiry of five months, though the petitioner was expected to withdraw the Suit, he did not withdraw the Suit. During the pendency of the Suit, another Suit was instituted before another Munsif substantially incorporating the assertions in the first Suit. Injunction application was rejected and appeal preferred was also dismissed. The High Court granted ad-interim order of injunction and that was subsequently vacated. Ultimately, the revision was dismissed against which the petitioner moved the Apex Court. It is in that context, the Apex Court noted that the proceedings initiated by the petitioner were gross abuse of process of Court repeatedly resorted to.

6. In the present case, no such case is made out. Hence, the reliance placed by Mr. Kate on the decision of **T. Arivandandam** (*supra*) does not advance the case of defendants No.1 to 3.

7. While rejecting the application, the learned trial Judge has also considered decision of **T. Arivandandam** (*supra*). In paragraph 18, the learned trial Judge noted that plaintiff has concern with the suit property

and accordingly rejected the application under Order VII, Rule 11(a) of C.P.C.

8. For the reasons recorded by the learned trial Judge, I do not find that the learned trial Judge has committed any error in rejecting the application. Hence, Application fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab