

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4077 OF 2018

MIRZA MASOOD BAIG MIRZA RUSTUM BAIG AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Shri Shaikh R.R.
AGP for Respondents 1 & 2 : Shri Yadav-Lonikar S.R.
Advocate for Respondent 4 : Shri Darak B.A.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 05, 2018
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PER COURT :-

1. The petitioners / original defendants 4, 3 and 5 respectively, are aggrieved by the order passed by the trial Court dated 25.4.2017, by which, application Exhibit 41 has been rejected and the trial Court has concluded that it has jurisdiction to entertain RCS No.392 of 2016.

2. The grievances of the petitioners is that the State of Maharashtra, being a party, any issue which would fall within the scope of the Maharashtra Land Revenue Code (MLR Code), cannot be entertained in a civil suit, in the light of the specific bar under Section 158. The trial Court has split the prayers of the plaintiffs into three portions. On two prayers, it concludes that the bar under Section 158 would apply. However, it further concludes that as the third prayer seeking restraining orders against the defendants to prevent them from creating

third party interest, the suit would be maintainable with reference to one relief.

3. Learned Advocate appearing on behalf of the plaintiff submits that the impugned order need not be interfered with as the said order has been passed under Section 9A (Maharashtra Amendment) to the Code of Civil Procedure (CPC) and by the Ordinance introduced by the State of Maharashtra dated 27.6.2018, the grievance of these petitioners under Section 9A would stand abated in the light of Clause 3(2) of the said Ordinance, keeping in view that Section 9A (Maharashtra Amendment) has now been deleted from the CPC. He submits that these petitioners could resort to Order VII Rule 11 of the CPC if they have any grievance.

4. Learned counsel for the petitioners submits that these petitioners are willing to file an application invoking Order VII Rule 11 of the CPC with regard to the jurisdiction of the trial Court. He, however, prays that the trial Court ought to decide as to whether 2/3rd of the suit could be held as untenable and whether 1/3rd of the suit could be adjudicated upon on the ground that one out of the three prayers can be entertained by the Civil Court.

5. In my view, the trial Court has not applied its mind to the aspect

as to whether a suit can be held to be partly untenable and whether one part of the suit can be adjudicated upon on the belief that one prayer out of the three could be entertained by the Civil Court. It is also not considered as to whether the solitary prayer, which the trial Court considers to be within its jurisdiction or adjudication, could be adjudicated upon. For these reasons, the impugned order deserves to be set aside and more so in the light of the statement of these petitioners that they would prefer an application under Order VII Rule 11 of the CPC.

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6. In view of the above and considering that the Maharashtra Ordinance No. XVIII of 2018, has deleted Section 9A of the CPC, this petition is partly allowed. The impugned order dated 25.4.2017 is quashed and set aside. Application Exhibit 41, filed on the basis of Section 9A stands disposed off.

7. The petitioners would be at liberty to file an application under Order VII Rule 11 of the CPC, which would be considered by the trial Court on its own merits. All the contentions of the litigating sides are kept open.

(RAVINDRA V. GHUGE, J.)

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