

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

WRIT PETITION NO. 11276 OF 2018

**GIRIVIHAR COOPERATIVE HOUSING SOCIETY LTD
NANDURBAR THROUGH CHAIRMAN BHARATKUMAR
VERSUS
VINOD KEVALCHAND BAFNA AND OTHERS**

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Advocate for the Petitioners : Shri M. M. Jadhav h/f.
Shri S. P. Shah

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 10th OCTOBER, 2018.

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PER COURT :

1. The petitioner/defendant No.7 is aggrieved by the order dated 20/01/2018 passed by the Trial Court, by which, application Exhibit 136 filed by this petitioner Society praying for rejecting the plaint under Order VII Rule 11 of the Code of Civil Procedure for want of deficit court fees, has been rejected. The Trial Court has observed that RCS No. 97/2008 is 10 years old and the suit is part-heard.

2. The contention of the petitioner is that it was added as a defendant in 2017. The suit property is a non-agricultural (NA) property from 1967. Plots were carved out and the

society has sold these plots. Hence, the suit has been under valued as the property has not been shown to be an N.A. property.

3. Reliance is placed upon the judgment of the Honourable Apex Court in *R. K. Roja Vs. U. S. Rayudu and another, (2016) 14 Supreme Court Cases 275*, to contend that an application under Order VII Rule 11 of the CPC can be filed at any stage in the suit.

4. I find from the prayer clauses set out in the suit that three plaintiffs have sought an injunction against the defendants for disturbing their peaceful possession in the suit plot Survey No. 169 and for restraining the defendants from creating any third party interest. It is also prayed that some construction, which has been forcibly carried out as is identified in the court commissioner's report, should be removed and the land should be cleared of the construction, which is an encroachment.

5. In 2017, this petitioner has moved an application for

being added as a defendant. The said application has been allowed and the petitioner had, accordingly been arrayed as defendant No.7. The suit is part heard and the recording of oral evidence is going on. The petitioner was permitted to be added as defendant No.7 since it was contended that the society has interest in the suit property and without considering the stand of the society, RCS No. 97/2008 would not be properly adjudicated upon.

6. The petitioner has placed reliance upon a map which does not disclose creation of plots or structures being erected on individual plots in Sy. No. 168, Sy. No. 169. The map placed before this Court at page 16 of the petition paper book indicates that there is a toilet block constructed on the north west corner, on plot No.168. Sy. No. 169 is shown on the east north corner on which the plaintiffs lay a claim. It is only to the extent of Sy. No. 169 that the plaintiffs have filed the suit for injunction. It will have to be established before the Trial Court that the suit property can be termed as being a non-agricultural property. *Ex-facie*, there is no proof that Sy. No. 169, as a stand alone suit property, could be termed as being

an N.A. Land.

7. In the light of the above, I do not find that the impugned order rejecting Exhibit 136 for the reason that the record available does not *prima facie* establish Sy.No. 169 to be an N.A. Land, could be termed as being perverse or erroneous.

8. This petition, being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-