

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 6 OF 2018

Chandrakant Baliram Sonwane
age 57 years, occ. business
r/o Kisanji Nagar
Jalgaon, dist. Jalgaon

Applicant

Versus

1. Shri Umakant Kashinath Deshmukh
age 55 years, occ. agriculture
r/o "Mauli" 12 B, Suyog Colony,
Jalgaon, Dist. Jalgaon.

2. Shri Ananda Lalchand Malche
age 50 years, occ. Agriculture
r/o Takarkhede, Tq. Erandol
Dist. Jalgaon.

Respondents

Mr. B.R. Waramaa, advocate for applicant.

Mr. S.B. Yawalkar, advocate for respondent no. 1.

WITH
CIVIL REVISION APPLICATION NO. 11 OF 2018

Ananda Lalchand Malche
age 50 years, occ. agriculture
r/o Takarkhede, Tq. Erandol
Dist. Jalgaon

Applicant

Versus

1. Shri Umakant Kashinath Deshmukh
age 55 years, occ. agriculture
r/o "Mauli" 12 B, Suyog Colony,
Jalgaon, Dist. Jalgaon.

2. Shri Chandrakant Baliram Sonwane
age 55 years, occ. agriculture
r/o Visanji Nagar, Jalgaon
Dist. Jalgaon

Respondents

Mr. L.B. Palod, advocate for applicant.
Mr. S.B. Yawalkar, advocate for respondent no. 1.

CORAM : M.S. SONAK, J.
DATE : 14th FEBRUARY, 2018

JUDGMENT :

1. Heard learned counsel for the respective parties.
2. Challenge in these civil revision applications is to the common order dated 09.06.2017 by which, the learned trial Judge has dismissed the revision applicants' applications seeking rejection of the plaint under Order 7 Rule 11 of the Code of Civil Procedure.
3. Learned counsel for applicants submit that in this case, there is no dispute and further, the pleadings indicate that the defendant no. 1 is a tribal. They submit that in the plaint, seeking decree of specific performance, there is a clear averment that plaintiff, in pursuance of agreement dated 16.08.2008, entered into between plaintiff and defendant no. 1, claims to have put in possession of the land in question. Learned counsel further submit that under section 36 of the Maharashtra Land Revenue Code, there is a clear bar for transfer of land by a tribal to a non-tribal without obtaining prior permission of the Collector. It is submitted that it is stated in the plaint that plaintiff has been put in possession of the land in pursuance of the agreement dated 16.08.2008 and such transaction is clearly null and void. They relied upon decisions in the case of **Raoji s/o Baliram Urkude Vs. State of Maharashtra and another**, 1985(2) Bom.C.R. 563 and

Atul Projects India Ltd. Vs. Babu Dewoo Farle and others, 2012(4) Bom.C.R. 272 in support of their contention that the transaction, on the basis of which, the suit has been filed is null and void. Learned counsel further submit that in case, there was no averment that plaintiff is in possession of the land then, perhaps, the suit might have been maintainable because, there are decisions which state that even in such matters, specific performance can always be granted and only execution will have to be deferred until permission of the Collector is obtained. They submit that in this case, since the plaintiff claims to have already put in possession, the suit is not maintainable. They submit that under section 10 of the Maharashtra Restoration of Land to Scheduled Tribe Act, 1974, the suit of such a nature is barred. They further submit that in terms of section 36C of the Maharashtra Land Revenue Code, no civil court, shall have jurisdiction to settle, decide or deal with any question which is by or under Sections 36, 36A or 36B required to be settled, decided or dealt with by the Collector. They submit that in this case, prior permission to sell the land by tribal to non-tribal as contemplated under section 36A of the Maharashtra Land Revenue Code is obtained and therefore, bar under section 36C will apply. They rely on decision of the Hon'ble Supreme Court in the case of **Church of Christ Charitable Trust & Educational Charitable Society Vs. Ponniamman Educational Trust**, 2012(8) SCC 706 to submit that illusion of cause of action cannot be created by clever drafting and further, if the suit is barred under any law, the plaint can always be rejected under Order 7 Rule 11 of the Code of Civil Procedure. For all these reasons, they submit that these revision applications are liable to be allowed and the plaint in the suit may be rejected.

4. Insofar as issue of non-declaration of cause of action is concerned, the same is to fail because, in the suit, plaintiff has alleged that there was an agreement between plaintiff and defendant no. 1 and, specific performance of the said agreement is claimed. The issue as to whether ultimately, a decree of specific performance can be granted or not is not relevant at this stage of determining whether or not any cause of action is disclosed in the plaint. There is distinction between the plaintiff having no cause of merits and, failure of plaintiff to disclose cause of action in the plaint. Upon reading of the plaint in its entirety, it cannot be said that some illusion of cause of action has been created as a result of clever drafting. This is a suit seeking decree of specific performance by alleging that there was an agreement between plaintiff and defendant no. 1. Therefore, there is no case made out to interfere with the impugned order.

5. As regards second contention that the suit, in view of some statements in the plaint, is barred under any provisions of law, again, a distinction is required to be made between the suit being barred under any law and, the transaction which is pleaded in the suit being allegedly barred under the provision of any law. Learned counsel for applicants actually made no submission in the context of the suit itself being barred under any provision of law on account of any statement in the plaint. The entire emphasis was on the submission that the agreement dated 16.08.2008 being barred under the provisions of Maharashtra Restoration of Lands to Scheduled Tribe Act, 1974 or under the provisions of Maharashtra Land Revenue Code. Whether this is so or not is clearly a matter to be raised during the course of defence.

However, at the stage of deciding application under Order 7 Rule 11 of the Code of Civil Procedure, it is impermissible to advert to the defence or to any defence raised in the course of written statement. For rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure, the Court has to essentially focus upon the plaint and the averments in the plaint. If, there is no statement in the plaint, on the basis of which, it can be said that the suit is barred under any law, there is no question of exercise of powers under Order 7 Rule 11 of the Code of Civil Procedure. If the defences raised by applicants are correct then, that may be a case for dismissal of the suit on merit. That may even be a case to refuse exercise of discretion in a matter of grant of specific performance. However, merely because according to applicants, there is a possibility that the suit may not ultimately succeed, the plaint itself cannot be rejected by resorting to Order 7 Rule 11 of the Code of Civil Procedure.

6. The decisions relied upon by the applicants merely state that transfer of land by tribal to a non-tribal without obtaining permission of the Collector under the provisions of the aforesaid Act or Maharashtra Land Revenue Code is void. The decisions nowhere state that the suit, in such a case, is required to be rejected under Order 7 Rule 11 of the Code of Civil Procedure. The provisions of section 36C, atleast prima facie, are not at all attracted if, the focus is only on the averments in the plaint. In this case, the suit does not question or purport to settle, decide or deal with any question which is required to be settled, decided or dealt with by the Collector under section 36, 36A or 36B of the Maharashtra Land Revenue Code. The learned trial Court has

correctly appreciated the scope of Order 7 Rule 11 of the Code of Civil Procedure in the context of the averments in the plaint. There is no error of jurisdiction or perversity in the making of the impugned order.

7. For the aforesaid reasons, these civil revision applications are dismissed.

8. However, it is clarified that the observations in the present order are only in the context of deciding whether the plaint was required to be rejected under Order 7 Rule 11 of the Code of Civil Procedure. Therefore, the learned trial Judge, need not be influenced by any such observation at the stage of deciding the suit on its own merit and in accordance with law. Infact, all defences and contentions of both the parties are kept expressly open for determination of civil Court.

(M.S. SONAK, J.)