

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

WRIT PETITION NO. 12713 OF 2018

Nawaz s/o Dada Patel

... Petitioner

Versus

Aminabee w/o Abdul Majid
& others

... Respondents

Mr. N.K. Tungar, Advocate for the Petitioner.

Coram : N.M. Jamdar, J.

Date : 10 December 2018

Per Court :

1. By this petition, the petitioner-original defendant no. 1 has challenged the order passed by the learned Civil Judge, Junior Division, Khultabad, on 16 July 2018 rejecting the application filed by petitioner seeking rejection of the plaint.

2. Leave is granted to the petitioner to convert the writ petition into Civil Revision Application. The impugned order was passed on 16 July 2018 and the petition was filed on 3 August 2018. Therefore, the Revision Application is in time. Amendment be

carried out during the course of the day.

3. The petitioner has sought rejection of the plaint on two grounds; firstly that no cause of action is made out in the plaint and secondly, on the ground of *res judicata*. Both the contentions have been negatived by the learned Civil Judge.

4. Learned counsel for the petitioner has addressed the Court only on the first ground i.e. the cause of action. The suit is filed by respondents-plaintiffs for declaration and possession. It is a settled position that while considering this ground what is to be seen are the averments in the plaint. Disclosure of cause of action is not the same as chances of success in the suit. In the plaint, respondents-plaintiffs have stated that they were dispossessed on a particular date. According to learned counsel for the petitioner, this statement is incorrect as the respondents-plaintiffs were not dispossessed on the said date. This is the defence of respondents-plaintiffs, which will have to be decided at the time of the trial. The learned Civil Judge has therefore rightly held that this issue be decided at the time of hearing of the suit alongwith the other issues. There is no error in the approach adopted by the learned Civil Judge.

5. Keeping all the options of the parties open, which has already been done by the learned Civil Judge, the revision application/writ petition is disposed of.

N.M. Jamdar, J.