

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 379 OF 2017

Arjun Rathod	...	Applicant
V/s.		
Meena Shamdas Guranani & Ors.	...	Respondents

- Mr. Shrishir Joshi i/b. Mr. Vaibhav A. Singh for the Applicant.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 19th MARCH, 2018.

P.C. :

- 1] Heard learned counsel for the Applicant.
- 2] By this Civil Revision Application, the Applicant is taking exception to the order dated 29th November 2016 passed by the City Civil Court, Mumbai, in Notice of Motion No. 2312 of 2013 in Suit No. 6967 of 2006.
- 3] The said Notice of Motion was taken out by the present Applicant, who is Defendant No. 14 before the trial Court for rejection of the plaint as per the Provisions of Order-7 Rule-11(d) of the Code of Civil Procedure (*for short, "C.P.C."*) as the suit appears to be barred by law.

4] It is submitted that Respondent-Plaintiff has filed this suit seeking following reliefs:

- a) *That this Hon'ble Court be pleased to declare that the Plaintiff is the owner by adverse possession of the suit property viz. Plot of land bearing Survey No.73 Hissa Nos.2 and 3 corresponding to CTS Nos. 137, 138, and 139 of Village Chakala, Taluka Andheri, Mumbai Suburban District admeasuring about 575.4 sq.mts. At Chakala, Dr. Charatsingh Colony, Andheri (East), Mumbai-400 093.*
- b) *That this Hon'ble Court be pleased to declare that the purported Development Agreement dated 2.8.2004 entered into between the Defendant Nos.1 to 11 on our part and the Defendant No.14 on the other part is illegal, bad in law, untenable and void and the same is not binding upon the suit property.*
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- j) ”

5] It is urged that in the earlier litigation filed by the Plaintiff, this Court has in its order dated 8th September 2006 passed in Notice of Motion No.3035 of 2006 in Suit No. 2568 of 2006 categorically held that the Plaintiff is not in possession of the suit property. In such situation, it is urged that, when she is held to be not in possession of the suit property, then she cannot claim the reliefs which she is seeking in this suit for a declaration that she has become owner by way of adverse possession. It is urged that the Hon'bel Apex Court has in the case of *Anathula Sudhakar V/s. P. Buchi Reddy & Ors., (2008) 4 SCC 594* and this Court has, in the case of *Jagdishsingh*

Deonandansingh V/s. Feku Jamnaprasad Yadav & Ors., 1997(1) Bom.C.R. 457, clearly held that without the prayer for possession, the suit simpliciter for declaration of ownership cannot be maintainable. It is submitted that appropriate remedy in such cases is the suit for declaration and possession, where the Plaintiff's title is under a cloud and he does not have possession.

6] According to learned counsel for the Applicant therefore when the Respondent/Plaintiff has not claimed the relief of possession and in view of the averments made in the plaint, she is not in possession, then her suit simpliciter for declaration cannot be tenable.

7] The reliance is also placed on the another judgment of the Hon'ble Apex Court in *Ram Saran V/s. Ganga Devi, 1971 DGLS (Soft) 231*, to point out that, in this judgment also, it was held that the suit for bare declaration, when the Plaintiff is not proved to be in possession, is liable to be dismissed in view of Section 34 of the Specific Relief Act.

8] According to learned counsel for the Applicant therefore this Court has to read the averments in the plaint carefully and meaningfully to unravel the relief, which the Plaintiff is claiming in the suit and if such relief is clearly barred by law, then the plaint

would have to be rejected.

9] However, at the outset itself, it has to be stated that, the above referred judgments on which learned counsel for the Applicant is placing reliance, pertain to the maintainability of the suit. In all these judgments (supra), the suits were tried, conducted and after the dismissal the suits, those judgments and orders were challenged in this Court or in the Hon'ble Apex Court and hence, it was held that the suit being simpliciter for declaration, without claiming possession, the suit was rightly dismissed.

10] Needless to state that, the maintainability of the suit and the rejection of the plaint in view of the express provisions of law barring the jurisdiction of the Court to entertain such suits are totally different provisions. They operate in two different areas and at two different stages. At the threshold itself, plaint cannot be rejected on the ground that the suit is not maintainable and ultimately it may be dismissed. None of these judgments (supra) state that, the plaint can be rejected under Order-7 Rule-11(d) of C.P.C., if it is a suit simpliciter for declaration of ownership, without seeking possession of the property.

11] Moreover, in this case, apart from seeking a declaration

about the ownership, the Respondent/Plaintiff is also seeking some other declaration relating to the agreement of development. The Court has to consider, whether there is any substance in her contention or not, especially when, as observed by the trial Court, she was previously permitted to withdraw the suit filed and liberty was granted to file a fresh suit. Therefore, the plaint cannot be rejected at the threshold itself.

12] Even on the meaningful reading of the plaint, it cannot be said that the suit is barred by any express provision of law or the jurisdiction of the Civil Court to take its cognizance is expressly prohibited, which is the per-requisite for rejection of plaint under Order-7 Rule-11(d) of C.P.C.. The impugned order passed by the trial Court therefore does not call for any interference.

13] The Civil Revision Application being without merit, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]