

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.470 OF 2013
WITH
CIVIL APPLICATION NO.580 OF 2013
IN
APPEAL FROM ORDER NO.470 OF 2013

Dattatraya Mahadeo Awtade & Anr.	...Appellants
Versus	
Someshwar Bhagwan Thite & Anr.	...Respondents

Mr. Sandeep M. Phatak for the Appellants.
Mr. Ajay A. Joshi for Respondent No.1.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 18TH SEPTEMBER, 2018.

P.C. :

1. Heard learned counsel for the appellants and the respondents.
2. This appeal takes an exception to the order dated 29.07.2011 passed by the District Judge-3, Pandharpur, thereby allowing Civil Appeal No.138/2007, which was preferred by the respondents herein challenging the order dated 10.09.2007 passed by the Civil Judge, Senior Division, Pandharpur in Regular Civil Suit No.197/2004 thereby rejecting the plaint under Order-7, Rule 11(a) of the Code of Civil Procedure.
3. The only ground on which the Trial Court has rejected the plaint is in the light of the provisions of Section 138(4) of The Maharashtra Land Revenue

Code, 1966 and Section 4, sub-section (1) and (g) of The Bombay Revenue Jurisdiction Act, 1976. It was held by the Trial Court that as the respondent has not filed a suit seeking declaration of the title to the suit land, such suit cannot be tenable in view of the express bar to the jurisdiction of the Civil Court in view of the Proviso to Section 138 quoted above.

4. The Appellate Court has, however, reversed the said order considering that though the respondent has not specifically claimed the relief of declaration relating to his title over the suit land, there are sufficient pleadings making it clear that, respondent was claiming the possession of the suit land on the basis of the title and therefore, the issue of title was definitely involved therein. The Appellate Court has also found that the respondent had already filed an application seeking amendment to the plaint for adding the relief of declaration of his title over the suit land. It was held that the Trial Court has, however, instead of deciding the said application, has rejected the plaint and therefore, the Appellate Court has reversed the order of the Trial Court and remanded the suit for trial.

5. This order of the first Appellate Court is challenged in this appeal by the learned counsel for the appellants by submitting that the first Appellate Court has committed an error in holding that there is no express bar to the jurisdiction of the Civil Court for entertaining such suit. According to the learned counsel for the appellants, the provisions of Section 138, sub-clause (4) of The Maharashtra Land

Revenue Code, 1966 clearly lays down such bar and this provision provides that *“Where any person has been ejected or is about to be ejected from any lands under the provisions of sub-section (2), he may, within a period of one year from the date of the ejection or the settlement of the boundary, institute a civil suit to establish his title thereto”*.

6. According to him, as on the date when this application, filed by the applicant for rejection of the plaint was decided by the Trial Court, there was no claim made in the suit for declaration of title and in that view of the matter, the Trial Court has rightly rejected the plaint.

7. The learned counsel for the appellants has then also relied on the provisions of Section 4(a) and (g) of The Bombay Revenue Jurisdiction Act, 1876, which provide that subject to the Exception appearing therein, no Civil Court shall exercise jurisdiction as to any of the matters like the suits to set aside or avoid any order passed under the said Act or any other law relating to the same subject for the time being in force.

8. Sub-clause (g) of Section 4 lays down that Civil Court cannot entertain the suit relating to claims regarding boundaries fixed under Bombay Act No.I of 1865, or any other law for the time being in force, or to set aside any order passed by a competent officer under any such law with regard to boundary-marks.

9. Here in this case, it is submitted that the competent officer has already fixed

boundary marks. In view thereof, the jurisdiction of the Civil Court being expressly barred, the First Appellate Court has committed an error in setting aside the order passed by the Trial Court by rejecting his contention that the Court should have considered the plaint as it was, when the application for rejection of the plaint was filed. In this respect, the reliance is placed on the judgment of this Court in the case of *Popat Jaysingh Rajpure Vs. State of Maharashtra & Ors.*, reported in 2012(5) Bom.C.R.751 and also *Patasibai And Others Vs. Ratanlal*, reported in (1990) 2 SCC 42. However, even a cursory glance to the said judgments go to show that the facts of both these judgments are totally different from the facts of the present case.

10. Herein this case, apparently even the very claim made by the respondent in the suit is sufficient to show that he is claiming his title indirectly on the basis of the possession. The very issue involved before the Trial Court in the suit was Whether the respondent has proved his ownership over the suit land. While deciding the question of jurisdiction, the Court has not merely to look into the prayer made in the plaint, but has to also look into all the averments made in the plaint to ascertain the crux of the subject matter of the suit. The first Appellate Court has rightly done so and then held that as the subject matter of the suit involves the question of title of the respondents/plaintiffs over the encroached portion and that question is required to be decided by the Civil Court, the

jurisdiction of the Civil Court cannot be said to be barred to entertain such suit.

11. Moreover, in this peculiar case, when the respondent has already filed an application for amendment of the plaint to introduce the relief of declaration of his title and ownership over the suit land, the Trial Court has committed an error in deciding this application for rejection of the plaint before deciding the application for amendment of the plaint. The Appellate Court has, therefore, rightly set aside the order of the Trial Court, rejecting the plaint on the grounds stated above and remanding the suit to the Trial Court for deciding on merits.

12. In view thereof, no interference is warranted in the impugned order passed by the Trial Court. The Appeal, therefore, stands dismissed.

13. In view of dismissal of the Appeal, pending civil application does not survive and the same stand disposed off as infructuous.

14. At this stage, learned counsel for the appellants seeks extension of the stay to the hearing of the suit, which was operating since the year 2013. Learned counsel for the respondents strongly resisted the same and in my opinion also having regard to the facts discussed hereinabove, no case is made out for extension of such stay to the hearing of the suit. Hence, this request also stands rejected.

[DR. SHALINI PHANSALKAR-JOSHI, J.]