

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

WRIT PETITION (ST) NO. 16202 OF 2018

Yashpal Shrikant Wadkar & Anr.

... **Petitioners**

V/s.

Shreyas Jaypal Wadkar & Ors.

... **Respondents**

Mr. Samir Kumbhakoni for the Petitioners.

CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 14th AUGUST, 2018

P.C.:

. By invoking the writ jurisdiction of this Court under Article 227 of the Constitution of India, this Petition is filed wherein the Order dated 23.03.2018 passed by the learned Joint Civil Judge, Junior Division, Solapur is challenged. The Petitioners are the original defendants who had moved the application under Order VII Rule 11 of Code of Civil Procedure, 1908 for rejection of the plaint. The said application was rejected. Hence, this Writ Petition.

2 The learned Counsel for the Petitioners submits that the Petitioners who are original defendants and the Respondents who are original Plaintiffs are in possession and occupation of the ancestral land and boundaries of this land which are not fixed. The Plaintiffs have filed suit for injunction on the ground that the Defendants i.e. Petitioners have encroached upon their land.

3 The learned Counsel for the Petitioners submits that as no boundaries were fixed and no measurements were carried out, there is no question of encroachment. Hence, no cause of action is made out on perusal of plaint. The Petitioners do not object for the measurements by TILR and therefore, the plaintiffs have approached to the office of the TILR for the measurements of the land. He further submits that the cause of action as mentioned in the paragraph 10 is false, as the Petitioners claiming possession of the land after death of their grandfather who expired in the year 2014 and they got possession in 2014.

4 Perused plaint. It is a suit for injunction and measurements. Whether Petitioners/defendants got possession of the suit land after death of their grandfather or not, is a matter of proof. However, on perusal of the plaint and after taking into account a cause of action and reliefs claimed, the plaint cannot be rejected under Order VII Rule 11 (d) of the Code of Civil Procedure, 1908. The Order dated 23.03.2018 passed by the learned Joint Civil Judge, Junior Division, Solapur is well reasoned. No interference is required.

5 Hence, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)