

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION NO.1525 OF 2013****IN****SUIT NO.828 OF 2013****WITH****NOTICE OF MOTION NO.1493 OF 2013****IN****SUIT NO.828 OF 2013****WITH****NOTICE OF MOTION NO.385 OF 2017****IN****NOTICE OF MOTION NO.1493 OF 2013****IN****SUIT NO.828 OF 2013**

Bhanumati Indubhai Patel And 3 Ors.

... Plaintiffs

Versus

Atul N. Patel And 3 Ors.

... Defendants

.....

Ms. Indrayani Koparkar, for the Plaintiffs.

Mr. Vishal Kanade, a/w. Mr. M.P. Vora, i/b. Pramodkumar & Co., for
Defendant No.1.

.....

CORAM**: S.C.GUPTE, J.****DATED****: 10 OCTOBER 2018****P.C.:**

. Notice of Motion No.1525 of 2013 is taken out by original
Defendant No.1 under Order 7 Rule 11 of the Code of Civil Procedure for
rejection of the plaint on the ground of want of jurisdiction in this Court.

2. The Plaintiffs have filed the present suit seeking a decree of possession against Defendant No.1, claiming him to be a rank trespasser. On the other hand, it is the case of Defendant No.1 that he was put in possession of the suit property by the Plaintiffs themselves as a prospective purchaser of the suit property. Whilst the merits of these respective cases are a matter of trial, it appears to be the Plaintiffs' own case that Defendant No.1 was put in possession of the suit property as a prospective purchaser by handing over the keys thereof "with a view to protect and preserve the same from any mischief which might be played" by her co-owners, i.e. Defendant Nos. 3 and 4, in the present suit. Whilst this averment of the Plaintiffs, which is made in an affidavit filed in a companion suit pending before the City Civil Court at Dindoshi, Mumbai, forms part of the plaint, a stand is taken in the plaint that the affidavit was prepared and filed in a certain background and, as a result of a certain fear on the part of the Plaintiffs of the property being lost to the underworld as a result of actions on the part of Defendant Nos. 3 and 4. It is, therefore, debatable whether the Plaintiffs have come to this Court with a specific case that Defendant No.1 was put in permissive possession of the suit property. Considering the affidavit filed in the companion proceedings by the Plaintiffs herein and also considering their stand in the present suit concerning that affidavit, the circumstances in which the affidavit came to be filed and a correct reading of the affidavit so far as the Plaintiffs' stand in the present suit is concerned, are matters of trial. In the premises, it may not be appropriate to dispose of this issue, namely, whether this Court has jurisdiction in the matter on account of the possession of Defendant No.1 being permissive, at this preliminary stage on an application under Order 7 Rule 11. Issues are still to be framed in the suit and the parties are yet to lead evidence in the

trial. On the basis of plain averments in the plaint it cannot be determined right away that the Plaintiffs have come to the Court with a specific case that the possession of Defendant No.1 was permissive at its inception, though, as I have noted above, it is arguable that it was so and capable of being proved in the trial. In the premises, a better course would be to reject the present motion but keep this issue open for the decision in the trial, since it involves leading of evidence.

3. Accordingly, the notice of motion of Defendant No.1 for rejection of the plaint under Order 7 Rule 11 (Notice of Motion No.1523 of 2013) is dismissed, but the issue as to whether the possession of Defendant No.1 was permissive at the inception and, as a result, whether or not this Court has jurisdiction to entertain the present suit, is kept open.

4. Notices of Motion Nos.385 of 2017 and 1493 of 2013 are stood over to 23 October 2018.