

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

CIVIL REVISION APPLICATION NO. 90 OF 2019

Shyamsundar Hiralal Pirthani and Others

..APPLICANTS

VERSUS

Kanchan Amit Pirthani and Others

..RESPONDENTS

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Mr. P.V. Barde, Advocate for applicants

Mr. R.A. Kotkar and Mr. A.S. Kamble, Advocates for Respondent Nos. 1 and 2

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CORAM : R.G. AVACHAT, J.

DATED : 26th AUGUST, 2019

PER COURT :

Heard.

2. The challenge in this application is to the order dated 21st January, 2019 passed by learned 9th Civil Judge, Senior Division, Aurangabad on an application (Exh. 44) in Regular Civil Suit No. 134 of 2018. Application (Exh. 44) was moved by present applicants (original defendants) for rejection of plaint under Order VII Rule 11 of Code of Civil Procedure. It was a suit for partition and separate possession of five immovable properties described in paragraph no.1 of the plaint. It was contended in application (Exh. 44) that plaintiff in the suit has asked for relief of perpetual injunction against Special Land Acquisition Officer. It was contended that such relief cannot be claimed

in the suit since the Land Acquisition Act provides remedy against Land Acquisition Officer. Thus the suit was barred by law.

3. One of the properties in the suit was acquired and disbursement of amount of compensation was pending. It was also the contention of petitioner that the suit is barred by provision of National Highways Act. Learned Civil Judge, Senior Division was pleased to reject application (Exh. 44). In my view, the application has rightly been rejected. It was the suit for partition and separate possession of five immovable properties. Only one of the suit properties has been acquired by Land Acquisition Officer i.e. Highway Authorities.

4. In the case of *Madhav Prasad Aggarwal and Anr. Vs. Axis Bank Ltd., 2019 (7) SCC 158* the Hon'ble Apex Court had held that the relief of rejection of plaint in exercise of powers under Order VII Rule 11(d) of Code of Civil Procedure cannot be pursued only in respect of one of the defendant(s) i.e. the plaint has to be rejected as a whole or not at all, in exercise of such power. If the plaint survives against certain defendant(s) and/or properties, Order VII Rule 11(d) of Code of Civil Procedure will have no application at all, and the suit as a whole must then proceed to trial.

5. In view of the aforesaid legal position, no interference with the impugned order is called for. Applicants may be at liberty to move an

application in respect of suit land, which has been acquired by National Highway Authorities. Needless to mention that Trial Court would decide such application, if any, on its own merits. Civil revision application is thus disposed of.

(R.G. AVACHAT, J.)

SSD