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

CIVIL REVISION APPLICATION NO.154 OF 2018

Gaus Mohiyoddin s/o Tamijoddin Faruqui
and others ... APPLICANTS

VERSUS

The State of Maharashtra & ors. ... RESPONDENTS

.....
Shri Pradeep Deshmukh, Advocate holding for
Shri Y.P. Deshmukh, Advocate for applicants
Shri P.M. Kulkarni, A.G.P. for State
Mrs. M.D. Thube – Mhase, Advocate for R.No.6 to 10
Shri D.R. Bhadekar, Advocate for respondent No.11
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CORAM: R.G. AVACHAT, J.

DATED : 7th OCTOBER, 2019

ORDER

Heard learned counsel for the parties. The challenge in this revision application is to the order dated 14.10.2016, passed by the Civil Judge, (Senior Division), Ambajogai, rejecting the application (Exh.60) in the suit, being Regular Civil Suit No.16/2016. The applicants herein are the original defendants No.1 to 8 in the suit. The respondent No.6

to 10 are the plaintiffs in the suit. Rest of the respondents are defendants No.9 to 17.

2. Shri Pradeep Deshmukh, learned counsel for the applicants would submit that, perusal of the plaint in its entirety, would undoubtedly disclose that there is no cause of action to the suit. The trial Court did not have jurisdiction to try the suit. The suit was barred by limitation. The plaint, thus, was liable to be rejected. The applicant, therefore, preferred the application Exh.60. The trial Court, however, rejected the same. The applicant had initially preferred a Writ Petition, being Writ Petition No.12118/2016, taking exception to the impugned order. The said Writ Petition was allowed to be withdrawn with liberty to file revision against the impugned order. The present revision application, therefore, came to be filed.

3. The respondent No.1 to 5/ plaintiffs filed the suit (No.16/2016) for following reliefs :

- “(B) The plaintiffs may kindly be declared owners of the suit property described in para No.1 supra.
- (C) The defendants may kindly be restrained from interfering and/or creating obstruction in the

possession of the plaintiffs upon the suit property, by themselves, through their servants and agents.

- (D) The defendants Nos.13 to 16 may kindly be directed to remove the wall referred to in para No.14 supra by issuing an injunction of the mandatory nature, within a stipulated period. If the defendants fail to comply, the said wall may be demolished and removed by the Court at the cost of the defendants."

4. The subject matter of the suit is 29 R land, forming part of Survey No.104/E, specifically described in para 1 of the plaint. The plaintiffs/ respondents No.1 to 5 claimed to be the owners, in possession of the suit land. The land comprised in Survey No.104/E admeasures 6 acres and 35 R. The Survey No.104/E was stated to be a sub-division of the land in Survey No.104, which totally admeasured 35 acres and 34 gunthas. It is stated in the plaint that, initially there were 8 holders of Survey No.104. With the passage of time, the number of sub-divisions increased. The suit land was service inam land held by one Nasibbi Inamdar. On enforcement of Hyderabad Abolition of Inams and Cash Grants Act, 1954, the inam was abolished. Occupancy/ ownership of the said land was conferred upon one Bhanudas Mali – Satwadhar. He was in

lawful possession of the land on 1.7.1960. The land was re-granted to him on payment of Nazrana. It is the case of the respondents No.1 to 5/ plaintiffs that, their father purchased the land admeasuring 4 acres 16 gunthas in Survey No.104/E from Bhanudas under a registered sale deed dated 7.8.1971. It has also been averred in the plaint that, major portion of the land Survey No.104/E has been acquired by the Government. A sketch delineating the suit land has been produced along with the plaint. I do not propose to reproduce the averments in the plaint which run into a few pages. Suffice it to say that, the respondents No.1 to 5/ plaintiffs claimed to be the owners, in possession of the suit land. The cause of action to the suit is stated to be that the applicants/ defendants No.1 to 8 are the holders of the land in the nearby of the suit land. The applicants tried to encroach upon the suit land and attempted to obstruct the respondents/ plaintiffs' possession thereover. It is also alleged in the plaint that, the respondents No.13 to 16 (defendants No.13 to 16) have erected a fencing wall by encroaching upon the suit land. A relief of mandatory injunction against these respondents/ defendants, for demolition of the fencing wall, has also been sought for.

5. Shri Pradeep Deshmukh, learned counsel for the applicants would submit that, the respondents/ plaintiffs did not own more than 4 acres of land. The said land came to be purchased under a compromise executed before the Deputy Collector/ competent authority. According to learned counsel, there was a compromise between the predecessor-in-title of the respondents/ plaintiffs No.6 to 10 and the original land owner. Only 4 acres of land was allowed to be sold. The respondents/ plaintiffs sold the entire land admeasuring 4 acres. The plaint averments are there to that effect. As such, there remains nothing with the respondents/ plaintiffs. Thus, the plaint did not disclose cause of action. No land in Survey No.104/E remained with the respondents/ plaintiffs so as to come with a suit. As it was an inam land, the Civil Court lacks jurisdiction to entertain the suit.

6. According to learned counsel, the suit is also not maintainable since the suit land is nowhere to be seen nor could it be described. In view of Section 2-A, 6(3), 33 of the Hyderabad Abolition of Inams and Cash Grants Act, Section 50B of the Hyderabad Tenancy and Agricultural Lands Act, the

jurisdiction vests with the competent authorities under those Acts. Since the respondents/ plaintiffs claim to have purchased the land which was an inam, the jurisdiction to entertain the suit is with the authorities under the Act and not the Civil Court.

7. I have considered the submissions made by the learned counsel for the parties, perused the plaint and also gone through the documents filed in support of the plaint. The trial Court has rightly rejected the application by its order dated 14.10.2016. There were three prayers in the application, (i) rejection of plaint, (ii) lack of jurisdiction of the Civil Court, and (iii) maintainability of the suit.

8. A prayer was made to the trial Court for framing of a preliminary issue, in view of Section 9-A of the Code of Civil Procedure. Since Section 9-A of the Code of Civil Procedure came to be deleted, the applicants withdraw the prayer for framing of a preliminary issue. Now the question is whether the averments in the plaint taken together do not disclose the cause of action and whether the suit is not maintainable ?

9. The suit land admeasuring 29 R has been described

in para 1 of the plaint. A sketch delineating the suit land has also been filed along with the plaint. The suit cannot be dismissed at the threshold for want of mis-description or non-description of the suit property.

10. So far as regards claim for rejection of the plaint, suffice it to say that the plaintiffs/ respondents No.1 to 5 have come with a case to have owned and possessed the suit land. Whether the respondents/ plaintiffs have purchased the land admeasuring 4 acres 16 gunthas or only 4 acres would be a question of fact to be decided by the trial Court on appreciating the evidence to be produced in support of rival claims. The respondents/ plaintiffs claimed to have purchased the land admeasuring 4 acres 16 gunthas under a registered sale deed dated 7.8.1971, whereas the applicants/ defendants rely on a compromise that was entered into between the father of the respondents/ plaintiffs and the original land owner before the Deputy Collector, whereunder the plaintiffs' predecessor is said to have purchased only 4 acres of land. This is also a matter of evidence. Reading of a plaint as a whole undoubtedly demonstrate the suit to have a cause of action. It has been averred in para 16 of the plaint that, in November 2015, the

applicants/ defendants came in the suit property and asserted their right to the suit land. The respondents/ plaintiffs, therefore, filed the suit for declaration of their title to the suit land with a prayer for perpetual injunction restraining the applicants from obstructing the respondents/ plaintiffs' possession.

11. Learned counsel for the respondents No.6 to 10 was right in submitting that the contentions raised by the applicants herein are their defences to the suit. The contentions raised are all disputed questions of facts. It is only the Civil Court which has jurisdiction to decide the issue of title to land and grant relief of declaration and injunction as well. If at all any issue to be decided by the competent authority under the Hyderabad Abolition of Inams and Cash Grants Act and the Hyderabad Tenancy and Agricultural Lands Act, the Civil Court may frame such issue and refer it to the competent authority for decision thereon.

12. I am at one with the submissions made by the learned counsel for the respondents No.1 to 5/ plaintiffs. It is reiterated that, the respondents No.1 to 5/ plaintiffs claim ownership and possession over the suit land admeasuring 29

gunthas. The applicants are stated to have had obstructed the respondents/ plaintiffs' possession over the suit land. The suit has, therefore, been filed. The respondents No.1 to 5/ plaintiffs may fail or succeed in the suit. It needs no mention that, possession itself is a good title against one and all, including a true owner. A true owner cannot dispossess a person in settled possession.

If the trespasser is in settled possession of property belonging to rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with possession. **[Rama Gowda (Deceased) by L.Rs. Vs. M. Varadappa Naidu (Deceased) by L.Rs. - 2004 AIR (SC) 4609].**

The reading of the plaint in its entirety, and the contentions raised by the applicants/ defendants would undoubtedly indicate that the plaint is neither liable to be rejected nor the suit is not maintainable. The contentions raised by the applicants/ defendants in the suit can only be answered after the parties produce evidence in support of their respective claims. The trial Court has rightly rejected the application. No

interference is called for with the impugned order.

13. In the result, Civil Revision Application is dismissed.

Learned counsel for the applicants seeks for continuation of the interim relief for a further period of four weeks. The prayer is granted. All interim orders to be continued for a period of four weeks from today.

(R.G. AVACHAT)
JUDGE

fmp/-