

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

CIVIL REVISION APPLICATION NO.210 OF 2018

BALAJI DNYANOBA KENDRE (BHOKRE)
VERSUS
HARIBAI JANARDHAN KARAD AND OTHERS

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Advocate for Petitioner : Mr. Kendre N.D.
Advocate for Respondents 1-5 : Mrs. Bhale K.S.
Mr Rakh Arun V. Adv. For R. 6 & 11-absent
Respondent Nos. 7 to 10 and 12 served.

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CORAM : V.K. JADHAV, J.
Dated: November 19, 2019

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PER COURT :-

1. Heard finally with consent at admission stage.

2. This Civil Revision Application has been preferred against the order of rejection of the application Exh.148 in RCS No.171 of 2012 filed by the present applicant under Order 7 Rule 11 of the Civil Procedure Code.

3. Learned counsel for the applicant/original defendant no.9 submits that the pleadings of the respondents/plaintiffs are vague, not disclosing a clear

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right to sue. Even though, the respondents/plaintiffs claims the suit property as the ancestral property possessed by the Hindu Joint Family, however, no details whatsoever are mentioned in the plaint. The learned Judge of the Trial Court has not considered the same and rejected the application filed by the applicant seeking rejection of the plaint under Order 7 Rule 11 of the Civil Procedure Code.

4. Learned counsel for the applicant, in order to substantiate his contention placed reliance on a judgment in case of **T. Arivandandam Vs. T.V.Satyapal and another** reported in **(1977) 4 Supreme Court Cases 467**.

5. Mrs. Bhale, the learned counsel appearing for respondent nos.1-5 submits that there are necessary pleadings about ancestral property, however, the evidence is not required to be pleaded. Furthermore, the applicant/original defendant no.9 by referring his defence pertaining to the self acquired property of the

original defendant no.1 filed an application for rejection of the plaint. Learned counsel submits that it is well settled that to consider the application under Order 7 Rule 11 of the Civil Procedure Code, the averments made in the plaint are relevant and not the defence plea in written statement.

6. Learned counsel for respondent nos. 1 to 5 in order to substantiate her contentions placed reliance on a judgment in case of **Satish Talakchand Shah Vs. Hirji Bhojraj and Sons Kutchi Oswal Jain Chhatralay Trust and others** reported in **2014(1) ALL MR page 345.**

7. On careful perusal of the plaint, particularly, paragraph nos.1 and 2, it appears that there are specific pleadings to the effect that the plaintiffs and defendants are the joint owners of the properties as detailed in the said paragraphs and it has been claimed that such properties are unpartitioned, undivided, joint and ancestral property of them. It has been further pleaded

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that though original defendant no.1 has no legal or exclusive title to the property and without protecting the legal right of the plaintiffs in their ancestral and joint family property illegally and unauthorisedly, without consent or permission of the plaintiffs behind their back had sold the suit property to the various persons. The respondents/plaintiffs had accordingly claimed the partition, separate possession of the property and so also cancellation of the sale deed executed by defendant no.1 in favour of various persons without there being any legal necessity. In my considered opinion, in the light of these pleadings the cause of action is very well disclosed.

8. In a case **T. Arivandandam Vs. T.V.Satyapal and another** (supra) relied upon by the learned counsel for the applicant, in paragraph no.5 of the order, the Supreme Court has made following observations :-

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High

Court it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under O. VII R. 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial court would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi : "It is dangerous to be too good."

9. In the given set of facts of the said case, the Supreme Court has noticed that on reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue. In the instant case, the reading of the complaint itself discloses a clear right to sue. Thus, the ratio laid down in the above cited case

cannot be made applicable to the facts and circumstances of the present case.

10. In a case **Satish Talakchand Shah Vs. Hirji Bhojraj and Sons Kutchi Oswal Jain Chhatralay Trust and others** relied upon by the learned counsel for respondents no. 1 to 5/original plaintiffs, in paragraph no.9 of the judgment, the learned Single Judge of this Court by relying upon the ratio laid down by the Surpeme Court in a case **Saleem Bhai and others Vs. State of Maharashtra and others.** reported in **AIR 2003 SC 759** held that in deciding an application under clauses (a) and (d) of order 7 Rule 11, the avernments in the plaint are the relevant and not the defence plea.

11. In view of the above discussion and considering the ratio laid down by this Court in case of **Satish Talakchand Shah Vs. Hirji Bhojraj and Sons Kutchi Oswal Jain Chhatralay Trust and others** reported in 2004 (1) ALL MR 345 relied upon by the learned counsel for respondent No. 1 to 5/plaintiffs and

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since the ratio laid down by the Supreme Court in the case of **T. Arivandandam Vs. T.V.Satyapal and another (977) 4 Supreme Court Cases 467** relied upon by the learned counsel for the applicant can not be made applicable to the facts and circumstances of the present case, I proceed to pass the following order.

O R D E R

I. Civil Revision Application is hereby dismissed.

II. No order as to costs.

(**V.K. JADHAV, J.**)

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