

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.626 OF 2018

Rajesh Chandrakant Shah

...Petitioner

vs.

Ashok Ramchandra Pawar and Ors.

...Respondents

Mr. Surel Shah, for the Applicant

Mr. R.P. Sabban, for Respondent No. 1.

CORAM : M. S. SONAK, J.

DATE : APRIL 02, 2019

P.C.:

. Heard Mr. Shah, learned counsel for the Petitioner and Mr. Sabban, learned counsel for the Respondent No. 1.

2. The challenge in this Petition is to the order dated 1st January, 2018 by which the learned trial Judge has dismissed the Special Civil Suit No. 223 of 2011 filed under Order VII Rule 11 of the Code of Civil Procedure (CPC) seeking rejection of the Plaint.

3. Mr. Shah, learned counsel for the Petitioner submits that the Respondents-Plaintiff have merely sought for a declaration that the sale deed in question is null and void. However, there is a consequential relief for restoration of the possession. He submits

that the proviso of Section 34 of the Specific Relief Act makes it clear that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

4. Mr. Shah relies upon the ***Union of India vs. Ibrahim Uddin and Anr. 2012 (5) ALL MR 462 (S.C.)*** in respect of the proposition advanced by him.

5. Mr. Sabban, the learned counsel for the Respondents defends the impugned order on the basis of reasoning reflected in the Plaintiff.

6. The power under Order VII Rule 11 can be exercised, only if, on the basis of statement in the Plaintiff. It is evident that suit is barred under any provisions of law. From the perusal of the Plaintiff, it can not be said that on the basis of some statement in the Plaintiff, the suit is barred under the provision of Section 34 of the Specific Relief Act. It is the case of the Petitioner, in his defence that the Respondents are not in possession of the suit property and therefore, the Respondents ought to have prayed for restoration of

possession. Such defence cannot be taken into account at the stage of deciding the application under Order VII Rule 11 of CPC.

7. That apart from the perusal of the record, it cannot be said that no consequential reliefs have been prayed for by the Respondents. The Respondents co-incidentally have not applied for declaration as to title and has applied for cancellation of the registered sale deed. At least *prima facie* the proviso of section 34 of the Specific Relief Act, may not be even attracted.

8. In ***Ibrahim Uddin*** (supra) the suit was for declaration of title of the ownership and even though the Plaintiff was admittedly not in a possession of suit property and no relief of possession was claimed. In these circumstances, the Hon'ble Supreme Court had observed that the suit was barred by the provision of Section 34 of the Specific Relief Act and ought to have been dismissed solely on the said ground. Again, this was a case of dismissal of the suit on merits and not a case of rejection of the Plaint by the resort to Order VII Rule 11 of CPC.

9. Besides, though it is not extremely relevant, it is not

necessary to note that evidence in the suit is already completed and matter is posted for the evidence of the Petitioner.

10. Although, the application under Order VII Rule 11 of CPC can be moved at any stage, in the facts of the present case, there is no infirmity in the impugned order and in any case this is not fit case in exercise of the discretion under section 115 of CPC.

11. Accordingly, this Civil Revision Application is dismissed.

12. There shall be no order as to costs.

13. However, it is made clear that by none of the observations made in the impugned order or the present order the learned trial Judge be influenced while deciding the suit in accordance with law.

14. All contentions of all parties are kept open.

(M. S. SONAK, J.)