

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
CIVIL REVISION APPLICATION NO. 636 OF 2016

Sanjay Khushalchand Lunkad

and Ors.

....Applicants

V/s.

Ramrao Bapusaheb Riswadkar

and Ors.

....Respondents

**APPEARANCES :**

Ms. Manjiri S. Parasnis, Advocate for the applicants.

None for the respondents.

**CORAM : SANDEEP K. SHINDE, J.**

**Tuesday, 25<sup>th</sup> June, 2019.**

**P.C. :**

1. Heard learned Counsel for the applicants
2. The applicants are defendants no.6, 7, 8 and 9 in the Regular Civil Suit No. 5826 of 2012 instituted by respondents no.1 and 2 (hereinafter called “the plaintiff”).

The plaintiff sought the following reliefs :

*“I) It be declared that the order dated 12<sup>th</sup>*

*March, 1991 in Case No.846KH is binding on Defts No.1 to 3.*

*II) It is be declared that Defts No.1 to 3 have no authority to sanction building plan in respect of suit land till Order dated 12 March, 1991 is not quashed or set aside by superior authorities of Competent Authority, Pune Urban Agglomeration.*

*III) That Defts No.1 to 3 be restrained from sanctioning building permission to Defts. No.4 to 9 by permanent injunction by suitable order.*

*IV) That Defts No.4 to 9 be restrained from making any construction on the suit lands by permanent injunction.*

*V) That cost of the suit be charged upon Defts.*

*VI) Other just and equitable orders be passed.”*

3. Defendants no.1, 2 and 3 are the Corporation

and its Officers who sanctioned the building plan in November, 2011 and permitted the defendant no.4- (Society) to carry out the construction. The only prayer and the relief sought against the applicants was, to restrain them from making the construction on the suit land.

4. The applicants had filed an application below Exhibit-23A under Order VII Rule 11 CPC for rejection of the plaint on the following grounds :

(i) mis-joinder and non-joinder of parties.

(ii) mis-joinder of cause of action.

(iii) leave under Order II Rule 2 of the CPC has not been sought.

(iv) the suit is barred by limitation, and

(v) that notice under Section 164 of the Maharashtra Co-operative Societies Act, was

not issued before institution of the suit.

5. The objection which relates to the notice of the Society, has been overruled since the plaintiff has deleted the Society as a party defendant.

6. The next objection as regards the mis-joinder and non-joinder has been overruled on the ground that, a plaint cannot be rejected on this count under Order VII Rule 11 CPC. I do not see any error committed by the learned Judge while declining the request to reject the plaint on the aforesaid two grounds. So also, the trial Court has correctly declined to reject the plaint on the ground of mis-joinder of cause of action.

7. It appears from the plaint that, the suit lands were declared as excess lands by the Competent Authority under the Urban Lands (Ceiling) Act of which development rights were assigned to the plaintiffs by the

erstwhile owners in 2003-2004. Plaintiff discloses in para no.10 that, rights were also acquired by the Housing Society in the very lands through the defendant no.5 who were likely to obtain sanction to building plan through the defendants no.4 and 9. The plaintiff discloses that, the plans were sanctioned by the Corporation at the instance of the defendants no.4 to 9 in November, 2011 and soon thereafter, the suit has been instituted in June, 2012. Therefore, upon reading the plaintiff, I am of the considered view that the suit was not barred by the limitation. Thus, for the reasons stated hereinabove, no case is made out for interference. The Civil Revision Application is accordingly dismissed.

**(SANDEEP K. SHINDE, J)**