

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.517 OF 2019

Kaluram Baburao Kand & Ors. ... Applicants
Vs.
Kisan Haribhau Kand & Ors. ... Respondents
.....
Mr. Nachiket V. Khaladkar for the Applicants.
None for the Respondents.
.....

CORAM : M. S. KARNIK, J.

DATE : 26th AUGUST, 2019.

P. C.:

1. Heard learned counsel for the applicants.
2. Learned counsel for the applicants has tendered copy of the plaint which is taken on record and marked as 'X' for identification.
3. The applicants are the original defendants who filed an application under Order VII Rule 11 of the Code of Civil Procedure for rejection of plaint. Learned counsel for the applicants pointed out that present respondent Nos.1 to 10 original plaintiffs had filed a suit for permanent injunction restraining the defendants from creating any third party interest in

respect of the suit property and for further relief that no measurement of the land should be carried out.

4. The applicants filed an application under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint. The Trial Court by the impugned order rejected the application.

5. Learned counsel for the applicants urged that the defendant Nos.11 and 12 are Government servants. Though notice under Section 80 of the Code of Civil Procedure was served on them however, before the expiration of two months the suit is filed and hence the suit is not maintainable as being premature. He would submit that no leave of the Trial Court is sought under Clause (2) of Section 80 of the Code of Civil Procedure before institution of the suit. It is further urged that the suit is barred by the provisions of the Bombay Tenancy and Agricultural Land Act as the issue of tenancy arises. It is further contention of the learned counsel for the applicants that no declaration is sought that the sale deeds are null and void. On this ground also the Trial Court should have rejected the plaint.

6. I have gone through the order passed by the Trial Court. The suit is filed for permanent injunction restraining the defendant Nos.1 to 10 from creating any third party interest in respect of the suit property. From the averments made in the plaint it is seen that reliefs are sought against the defendant Nos.1 to 10. No doubt suit is filed before the expiration of period of 60 days after issuance of notice under Section 80 of the Code of Civil Procedure to the defendant Nos.11 and 12, however, the Trial Court has considered the urgency and then proceeded to entertain the suit.

7. In so far as the objection of the applicants that the suit is barred by the provisions of Bombay Tenancy and Agricultural Land Act is concerned, it is always open for the Trial Court to refer the issue of tenancy to the Tenancy Court if the occasion so arises.

8. From the plaint it is seen that the plaintiffs have sought permanent injunction against the defendants. Just because no declaration that the sale deed is null and void is prayed for in the suit is no ground to entertain the submission of learned counsel that plaint deserves to be rejected under Order VII Rule 11 of the Code of Civil Procedure.

9. In so far as the objection about notice under Section 80 of the Code of Civil Procedure is concerned, the defendant Nos.11 and 12 at the appropriate stage will always be at liberty to raise objection. In my opinion, the impugned order passed by the Trial Court does not call for any interference, as after recording proper reasons the Trial Court rejected the application. It cannot be said that there is any material irregularity in the exercise of jurisdiction by the Trial Court.

10. It is made clear that in case respondent Nos.11 & 12 file an appropriate application, the same shall be considered by the Trial Court on its own merits without being influenced by the impugned order.

11. With these observations the Civil Revision Application is dismissed.

(M. S. KARNIK, J.)