

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10281 OF 2014

1. Giridhar Murlidhar Jagtap
Age : 45 years, Occu. Service
2. Suman Murlidhar Jagtap
Age : 65 years, Occu. Housewife
3. Raju Murlidhar Jagtap
Age : 38 years, Occu. Service
4. Kumar Murlidhar Jagtap
Age : 37 years, Occu. Business
5. Shridhar Murlidhar Jagtap
Age : 36 years, Occu. Service
All residing at Siddhnathwadi, Wai,
Taluka Wai, District Satara

...Petitioners
(Ori.
Defendants)

Versus

1. Shrirang Balwant Bagade
Age : 68 years, Occ. : Agriculturist
2. Jaywant Genu More
Age : 75 years, Occ. : Agriculturist
3. Bapu Dinu Bagade
Age : 75 years, Occ. : Retired &
Agriculturist
4. Radhabai Anand Rao More
Age : 80 years. Occ. - Housewife
All residing at Siddhanathwadi, Wai,
Taluka Wai, District Satara.

...Respondents
(Ori.plaintiffs)

Mr. Prasad S. Dani, Senior Counsel, i/b Mr. Nandu V. Pawar,
for the Petitioners.

Mr. Avinash B. Avhad, for Respondent nos.1 and 3.

CORAM: N. J. JAMADAR, J.

RESERVED ON : 16th JULY, 2019

PRONOUNCED ON : 28th AUGUST, 2019

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the Counsels for the parties, heard finally.

2. The challenge in this petition is to an order passed by the learned Second Joint Civil Judge, Junior Division, Wai, dated 4th October, 2014, on an application (Exhibit 18) preferred by the petitioners – defendants under Order VII Rule 11 of the Code of Civil Procedure (“the Code”), whereby the learned Civil Judge was persuaded to reject the application for rejection of the plaint in the suit being Regular Civil Suit No.28 of 2014, instituted by the respondents – plaintiffs.

3. The background facts can be summarised as under:

(A) The plaintiffs claimed to be the owners of the property bearing City Survey No.2507 and 2508/B situated at Siddhnathwadi, Kasabe Wai, Taluka Wai, District Satara (hereinafter referred to as “the suit properties”). It is the claim of the plaintiffs that they are the members of Bouddha community. The suit properties have been allotted by the orders of the District Collector, Satara, for the members of the Bouddha community and accordingly entries have been made in the City Survey record right from the year 1954 in the names

of the members of the Bouddha community as holders thereof. One of such members of the Bouddha community was Genu Kalu Mahar, who died on 20th March, 1959. After the demise of Genu, the name of Mahadeo Dnyanoba Jagtap came to be mutated as the manager of the joint family. Murlidhar was the brother of Mahadeo. Defendant no.2 is the wife of Murlidhar and defendant nos.1, 3, 4 and 5 are the sons of Murlidhar.

(B) The defendants – petitioners have raised a dispute about the entries in the City Survey record in respect of the suit properties. By a judgment and order dated 30th April, 2012, the Deputy Superintendent of Land Records, Wai, has ordered that the name of the predecessor in title of the plaintiffs mutated to the suit properties, on the basis of the original enquiry, be deleted and that of the defendants – petitioners be mutated thereto. The plaintiffs thus instituted the suit seeking a declaration regarding the title of the plaintiffs over the suit properties. A further declaration was sought that the judgment and order passed by the Deputy Superintendent of Land Records on 30th April, 2012, does not bind the plaintiffs and consequential relief of injunction was also sought.

(C) The petitioners – defendants appeared in the said suit and filed an application (Exhibit 18) under Order VII Rule

11 of the Code and prayed that the plaint be rejected. As many as 27 grounds were enumerated in the said application, including the ground that there was no cause of action for institution of the said suit.

(D) The learned Civil Judge was persuaded to reject the application by culling out the points which appeared from the application preferred by the petitioners and ascribing reasons as to how those points did not constitute the grounds for rejection of the plaint under Order VII Rule 11 of the Code.

4. Being aggrieved, the petitioners – defendants have invoked the writ jurisdiction of this Court.

5. I have heard Mr. Dani, the learned Senior Counsel for the petitioners and Mr. Avhad, the learned Counsel for the respondents. I have perused the material on record.

6. Mr. Dani, the learned Senior Counsel for the petitioners would urge that the learned Civil Judge completely misdirected himself in rejecting the application for rejection of the plaint by assigning totally unjustifiable reasons. It was submitted that the learned Judge did not properly appreciate the challenge to the tenability of the plaint raised by the petitioners – defendants.

7. At the outset, it is necessary to note that the application (Exhibit 18) preferred by the petitioners before the trial Court, was omnibus in nature. Myriad reasons were sought to be ascribed for rejection of the plaint, at the threshold, purportedly in exercise of the power contained in Order VII Rule 11 of the Code. No endeavour was, however, made to seek rejection of the plaint with reference to the specific Clauses (a) to (f) of Rule 11. Albeit, a bald assertion was made that the plaint does not disclose a cause of action.

8. It is true that, the consideration of the matter and articulation of reasons by the learned Civil Judge could have been in a more refined manner. However, upon a careful perusal of the plaint as a whole and appreciation of the dispute sought to be raised by the plaintiffs therein, in my considered view, the ultimate finding of the learned Civil Judge that the defendants – petitioners had not made out a case for rejection of the plaint seems sustainable and, thus, does not warrant any interference.

9. Mr. Dani, in the backdrop of the nature of the application, fairly restricted the challenge to the impugned order, on the ground that in view of the bar contained in Section 158 of the Maharashtra Lands Revenue Code, 1966 (“the Revenue Code”),

the suit was barred as the plaintiffs professed to challenge the legality, propriety and correctness of the order passed by the Deputy Superintendent of Land Records, Wai, dated 30th April, 2012, whereby the names of the petitioners – defendants were directed to be mutated to the record of rights of the suit properties by deleting the names of the alleged predecessor in title of the plaintiffs. This aspect, according to the learned Senior Counsel, was not at all adverted to by the learned Civil Judge. Amplifying the submission, it was urged that a bare perusal of the plaint reveals that the cause of action for the suit seems to be the order passed by the Deputy Superintendent of Land Records in the proceedings i.e. Registration No.37 of 2012, and the suit is for setting aside the said order and consequent mutation.

10. I am afraid to accede to the aforesaid submission. Undisputedly, the names of Genu Kalu Mahar and others were mutated as holders of the suit properties in the year 1954. In the year 1960, the name of Mahadeo Dnyanoba Jagtap came to be mutated as the manager of the joint family. It seems that in the year 2010, a dispute was raised by the petitioners regarding the entries in the City Survey Record of the suit properties, in Appeal No.172 of 2010. The District Superintendent of Land

Records partly allowed the appeal by the judgment and order dated 26th May, 2011 and remitted the matter to the Deputy Superintendent of Land Records for a fresh enquiry. By the judgment and order dated 30th April, 2012, the Deputy Superintendent of Land Records directed that the names of the respondents and their predecessor in title mutated in the City Survey Record of the suit properties, pursuant to original enquiry, be deleted and the names of the petitioners be mutated thereto.

11. If the plaint is read as a whole, in the backdrop of the aforesaid proceedings before the City Survey Authority, it becomes evident that the plaintiffs – respondents claim that the suit properties were allotted by the District Collector, Satara, for the benefit of the members of the Bouddha community. The plaintiffs are the members of the Bouddha community. The suit properties were mutated in the names of the members of the Bouddha community, as holders thereof in the year 1954. The petitioners – defendants claim through one of such persons. As the Deputy Superintendent of Land Records has passed the order to delete the names of the predecessor-in-title of the plaintiffs and mutate the names of the defendants, the plaintiffs have been constrained to institute the suit for

declaration of their title over the suit properties. It is averred that the enquiry conducted by the Deputy Superintendent of Land Records was in violation of the fundamental principles of judicial process. The said enquiry and the consequent order passed by the Deputy Superintendent of Land Records, thus, does not bind the plaintiffs. A specific prayer seeking declaration of the title of the plaintiffs over the suit properties is made.

12. On the perusal of the plaint, as a whole, an inference becomes inescapable that the suit is primarily for declaration of title over the suit properties. The challenge to the order passed by the Deputy Superintendent of Land Records and the assertions in the plaint regarding its legality and propriety are incidental. Indisputably, a suit for declaration of proprietary title over the property falls within the jurisdiction of the Civil Court. In this backdrop, the challenge to the tenability of the suit on the ground that Section 158 of the Revenue Code incorporates a bar for institution of the suit in respect of an entry made in the revenue record, is unworthy of acceptance.

13. The upshot of the aforesaid consideration is that the learned Civil Judge was right in his conclusion that no case was made out for rejection of the plaint in exercise of the powers

contained in Order VII Rule 11 of the Code. Thus, no interference is warranted, in exercise of the extra-ordinary jurisdiction, by this Court.

14. Resultantly, the writ petition stands dismissed.

15. Rule stands discharged.

[N. J. Jamadar, J.]