

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL REVISION APPLICATION NO. 43 OF 2019

Prakash Madhavrao Gund and others

vs.

Sau. Anita Ananta Gawhande

Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri. S. O. Ahmed, counsel for applicants.
Shri. Nitin Vyavhare, counsel for respondent.

CORAM : MANISH PITALE J

DATED : 09/12/2019

By this revision application, the applicants (original defendants) have challenged order dated 12/03/2019, passed by the Joint Civil Judge Junior Division, Chikhali, whereby an application filed by the petitioners under Order 7 Rule 11 of the Civil Procedure Code (C.P.C.) for rejection of plaint has been rejected.

2. The ground raised on behalf of the petitioner while seeking rejection of plaint before the Trial Court was that the suit filed by the respondent (original plaintiff) herein for grant of declaration and permanent injunction, was barred by law, inasmuch as the petitioners had already instituted a suit under Section 5 of the Mamlatdar's Courts Act, 1906 and by operation of law under Section 26(b) of the aforesaid Act, the present

suit filed by the respondent was barred by law.

3. It is claimed on behalf of the petitioners that they had filed an earlier suit under Section 5 of the aforesaid Act, claiming that the respondent did not have any right to obstruct the approach to their agricultural field through the agricultural field of the respondent and that the same was allowed in favour of the petitioner. In the face of the said proceeding it was claimed by the petitioners that subsequent suit filed by the respondent seeking declaration and permanent injunction was barred by Section 26(b) of the aforesaid Act.

4. The Trial Court has taken into consideration the material on record and it found that since, at this stage, only the plaint could be looked into, a perusal of plaint filed would show that the nature of reliefs sought by the respondent were relatable to Sections 34 and 38 of the Specific Relief Act and it could certainly not be said that the suit filed by the respondent deserved to be nipped in the bud by allowing the application.

5. The petitioners have placed reliance on Section 26(b) of the aforesaid Act to claim that suit filed by the respondent is barred by operation of law. A perusal of the said provision shows that the opening words used are “No suit shall lie under this Act”. Admittedly, a bare reading of the plaint in the suit filed on behalf of the respondent shows that it is not a suit filed under the aforesaid Act and it is, in fact, a suit for

declaration and permanent injunction against the petitioners. On this short ground, it becomes clear that Section 26(b) of the Act would not be applicable. No error can be found in the impugned order passed by the Trial Court.

6. Accordingly, the revision application is dismissed.

JUDGE