

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8003 OF 2020

1. Mohammed Rauf S/o Mohammed Amir,
Age : 63 years, Occ: Retired,
R/o Sami Manzil, Maqsood Colony, Aurangabad.
2. Asra Nafis w/o Rafat Yaar Khan,
Age : 30 yrs, Occ: Household,
R/o Mill Corner, Kotwalpura, Aurangabad.
3. Samiya Tabassum w/o Irfan Ali,
Age : 25 yrs. Occ: Household,
R/o as above.
4. Bushra Fatema w/o Shaikh Saeed,
Age : 25 yrs. Occ: Household,
R/o as above

PETITIONERS

(Orig. Defendant Nos. 1 to 4)

VERSUS

1. Afreen Begum w/o Mohammed Rauf,
Age: 38 yrs, occ: Business,
R/o. Sami Manzil,
Maqsood Colony, Aurangabad.
2. Reema Naaz w/o Sayyed Abdul Kadir,
Age : 20 yrs, Occ: Household,
R/o Silk Mills Colony,
Aurangabad.
3. Mohammed Sami s/o Mohammed Rauf,
Age :17 yrs, Occ: Student,
R/o Sami Manzil,
Maqsood Colony, Aurangabad.
4. Jara d/o Mohammed Rauf,
Age : 13 yrs, Occu: Student,
R/o as above.
(Respondent Nos.3 and 4 being minor are
under the guardianship of mother
i.e. respondent No.1)

RESPONDENTS

(Orig. Plaintiff Nos.1 to 4)

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Advocate for Petitioners : Mr. Rameez M. Shaikh
advocate for Respondents : Mr. M.N. Deshmukh

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CORAM : MANGESH S. PATIL, J.

DATE : 08.12.2020

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. With the consent of both sides the matter is heard finally at the stage of admission. The original defendants are before this Court being aggrieved and dissatisfied by rejection of their application seeking rejection of plaint under Order 7 Rule 11 Clause (d) of the Code of Civil Procedure.

2. The respondents filed a suit seeking declaration and injunction. Declaration to the effect that the transfer of the Suit Properties by way of sale deed and gift by the petitioner No.1 are void. Asserting to be in exclusive possession of the suit properties, they also claimed perpetual injunction restraining the petitioners from obstructing their settled possession.

3. By their Application (Exhibit-32) the petitioners contended that since the parties are Mohammedan, so long as petitioner No.1 to whom the properties exclusively belong is alive, the rest of the petitioners and the respondents derive no right or title in the suit properties. It was therefore contended that in view of such a legal position the respondents also could not question disposition of properties by him and consequently the plaint was liable to be rejected.

4. The respondents opposed the application. By the impugned

order the learned Judge rejected the Application (Exhibit-32). Hence this Writ Petition.

5. The learned advocate for the petitioners strenuously submitted that since the parties are Mohammedan and when admittedly the petitioner No.1 is the exclusive owner of the suit properties the respondents cannot claim any right or share in the properties as well as cannot question the transfer of suit properties made by him.

6. Per contra, the learned advocate for the respondents submits that the respondents are also asserting their exclusive possession in the suit properties and have claimed perpetual injunction. He also strenuously argues as to how the gift in question are not valid in as much as possession has never been delivered.

7. Since it is a question of rejection of plaint under the provision of Order 7 Rule 11 Clause (d) of the Code of Civil Procedure, assuming for the sake of arguments that the respondents are not entitled to claim any right or share in the properties in dispute as those are exclusively owned by the petitioner No.1 and they do not derive any right or share during his life time, still, the respondents are also simultaneously claiming perpetual injunction restraining the petitioners from disturbing their possession in the suit property which according to them is settled one. If this be so, irrespective of any right in the suit properties vesting in the respondents, *prima facie* they are entitled to maintain a suit for injunction if according to them they are in exclusive and settled possession of the suit properties.

8. The learned advocate for the petitioners could not demonstrate as to how the Suit to the extent of the prayer for perpetual injunction is barred by any law as is contemplated under Clause (d) of Rule 11 of Order 7 of the Code of Civil Procedure. In the absence of any such bar, when a relief of perpetual injunction is maintainable, the plaint could not have been rejected more so when the law does not contemplate any partial rejection of the plaint under that provision.

9. Though in the impugned order the learned Judge has not resorted to this reasoning, in my considered view the ultimate conclusion drawn by him cannot be assailed. The Writ Petition does not have any substance.

10. The Writ Petition is dismissed. The Rule is discharged.

(MANGESH S. PATIL, J.)

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