

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

WRIT PETITION NO.6344 OF 2020

Shani Mandir Shikhwada, Beed,
Registered Public Trust at Beed,
Dist. Beed, bearing PTR No.A-1006,
Through its Trustee,
Ramnath s/o. Ganpatrao Khod,
Age : 37 years, Occ.Trustee,
r/o. Shani Mandir, Galli Peth,
Beed

..Petitioner

Vs.

Anupam s/o. Radheshamji Attal,
Age : 33 years, Occ. Agri. and Trade,
r/o. Main Road, Georai,
Tq. Georai, Dist. Beed
and others

..Respondents

Mr.V.D.Salunke, Advocate for petitioner
Mr.G.K.Naik-Thigle, Advocate for respondent no.1
Mr.S.N.Morampalle, AGP for respondent no.2

**CORAM : R.G. AVACHAT, J.
RESERVED ON : MARCH 10, 2021
PRONOUNCED ON : MAY 06, 2021**

ORDER :-

The challenge in this Writ Petition is to the order dated
30.01.2020 passed by 5th Joint Civil Judge, Senior Division, Beed,

rejecting the application Exhibit 36 in Regular Civil Suit No.482 of 2019. The application below Exhibit 36 was moved by defendant no.3 (petitioner herein) for rejection of the plaint in view of Order VII Rule 11(d) of the Code of Civil Procedure ("C.P.C.", for short). Defendant no.3 is, therefore, before this Court in this Writ Petition.

2. Heard. Perused the impugned order.

3. Mr.Salunke, learned counsel for the petitioner, would submit that the suit is hit by multifariousness of causes of action. The suit property is situated at Georai, Dist. Beed. No relief has been claimed against the State of Maharashtra or its officials. The Court at Beed had, therefore, no territorial jurisdiction to entertain and try the suit. Relief of declaration regarding entries in the revenue record has been sought. Moreover, the relief of declaration as regards the decision given by the Assistant Charity Commissioner in Change Reports have also been sought to be declared as non-est. Moreover, the proceedings held under the Maharashtra Prevention of

Fragmentation and Consolidation of Holdings Act, 1947 and the Maharashtra Agricultural Lands (Ceiling on Holding) Act, 1961 have also been sought to be impliedly set aside. The trial Court ought to have allowed the application for rejection of the plaint. Learned counsel, therefore, urged for allowing the Writ Petition.

4. Mr.Thigale, learned counsel for respondent no.1, would, on the other hand, submit that no ground has been made out for rejection of the plaint. The trial Court has, therefore, rightly rejected the application. No interference is called for with the impugned order.

5. Order VII Rule 11 of C.P.C. speaks of rejection of plaint. It reads - the plaint shall be rejected in the following cases :-

- (a)
- (b)
- (c)
- (d) *where the suit appears from the statement in the plaint to be barred by any law;*
- (e)
- (f)

6. It is settled proposition of law that for rejection of the plaint, the averments in the plaint have only to be gone into. The suit has been filed for the following main reliefs:-

B) The plaintiff be declared as owner and possessor of suit land, bearing Survey No.30(Old), Gut No.84, situated at village Kolher, Tq. Georai, Dist. Beed, admeasuring 30 Acres 31 R, assessed for Rs.21-22 Ps., as fully described in para no.1 of the plaint;

C) Decree of perpetual injunction restraining defendant nos.1 to 4 permanently from obstructing the lawful and peaceful possession of the plaintiff over the suit land;

D) It may be declared that the entry in the name of "Shri Sansthan Shani Mandir", in the revenue records of Survey No.30(Old), Gut No.84, situated at village Kolher, Tq. Georai, Dist. Beed admeasuring 30 Acres 31 R assessed for Rs.21-22 Ps., be declared as null, void and illegal and as such is not binding on the plaintiff.

E) It may be declared that the order passed by the learned Assistant Charity Commissioner, Aurangabad, dated 20.07.1983 in Change Report No.1170/1982 holding that the suit land is the property of Trust, is null and void-ab-initio, without jurisdiction, and illegal and as such ineffective to the rights, title, ownership and possession of the plaintiff over the suit land.

7. It has been averred in the plaint that the suit land originally belonged to the great grand-father of the plaintiff. The suit land came to the share of the plaintiff in the oral partition. The plaintiff has been in possession of the suit land. The entries in the revenue record of the suit land and the decision given by the Assistant Charity Commissioner in the Change Report No.1170 of 1982, are *void-ab-initio*.

As such, it is the suit for declaration of the plaintiff's title to the suit land with consequential relief of perpetual injunction. From the averments in the plaint, it cannot be said that the suit is barred by any law. The plaintiff may not have merit in his suit. The trial Court has, therefore, rightly rejected the application below Exhibit 36.

8. Learned counsel for the petitioner submitted that no relief has been prayed against the State of Maharashtra and Assistant Charity Commissioner. The suit land is situated within the limits of the Court of Civil Judge, Junior Division,

Georai. The State has been made party to the suit only with a view to file the suit in the Court at Beed.

The submissions made by learned counsel for the petitioner are appealing. The petitioner had, however, not moved the trial Court for deletion of defendant nos.1 and 2 from the array of the suit and return of the plaint for filing it in the Court at Georai. The submissions made by learned counsel for the petitioner, therefore, could not be considered for deciding the present Writ Petition.

9. For the reasons stated herein above, no interference is called for with the impugned order. The Writ Petition, therefore, fails. The same is dismissed.

[R.G. AVACHAT, J.]

KBP