

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

WRIT PETITION NO.4496 OF 2020

Rajesh Shivajirao Pawar

Petitioner

Versus

Shashikant s/o Jagannath Udawant

Respondent

Mr.Narendra D. Sonavane, advocate for the petitioner

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CORAM : AVINASH G. GHAROTE, J.

DATED : 29th JUNE, 2021.

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PER COURT :

1 Heard Shri Narendra Sonavane, learned Counsel for the petitioner.

2 The challenge, in the present writ petition, is to the rejection of the application under Order VII Rule 11 of the Code of Civil Procedure, which was filed for rejection of the plaint on the ground that there is no cause of action.

3 It is contended by Mr.Sonavane, learned Counsel for the petitioner, that the suit for permanent and mandatory

injunction, came to be filed against the present petitioner by the respondent, claiming that there was a possibility of illegal construction by the petitioners over the property of the respondent, which was objected to and the same was desisted from. Subsequently, it is alleged that on 24.09.2019, again an attempt has been made by putting construction material on the plot of the plaintiff/respondent. The learned Counsel submits that insofar as the claim for permanent injunction is concerned, there is no cause of action. He further submits that insofar as the relief claimed in prayer clause "C", regarding removal of illegal construction is concerned, if it is so found, by directing the defendant to do so or on his failure, by directing the same to be done by the competent authority, is contrary to the procedure as contemplated under Section 91 of the Code of Civil Procedure. He, therefore, submits that the averments have not been properly appreciated by the trial Court in rejecting the application under Order VII Rule 11 of the Code of Civil Procedure.

4 The learned Counsel places reliance upon the judgments in the case of (i) **T. Arvindandam Vs. T.V. Satyapal**; 1977 DGLS (SC) 300; and (ii) **The Church of Christ**

Charitable and Education Charitable Society Vs. Ponniamman Educational Trust, 2012 DGLS (SC) 310. The learned Counsel contends that the plaint does not disclose any cause of action and the same is, therefore, liable to be rejected under Order VII Rule 11 of the Code of Civil Procedure.

5 I have gone through the plaint, which is filed on record and I find that paragraphs 5 and 8 of the plaint clearly demonstrate the cause of action. It is to be noted here that the cause of action is a bundle of facts, which gives rise to the filing of the suit, which also depends upon conduct of the defendant. In the present matter, reading of the plaint, specifically paragraphs 5 and 8, would indicate that the cause of action does exist. I, therefore, do not find any infirmity with the order of the trial Court.

6 The judgments relied on by Mr.Sonawane are clearly not attracted for the reason that in the case of **Church of Christ** (*supra*), it has been held, that the averments in the plaint have to be looked into, which has been so done in the present case. In **T. Arivandandam** (*supra*), it is held that if the averments of the plaint indicate that the suit is vexatious and

meritless not disclosing any clear cause of action, then the plaint is liable to be rejected. In the instant case, there is no dispute about the fact that the plaintiff/respondent is the owner of the property in question, upon which, he apprehends that the petitioner/respondent intends to encroach in respect of which acts, averments have been made in paragraphs 5 and 8. This, in my humble opinion, gives rise to a cause of action. Section 91 of the Code of Civil Procedure is clearly not attracted in the matter as the cause is personal to the plaintiff against the defendant.

7 For the above reasons, there is no merit in the petition. The same is accordingly dismissed. In the circumstances, there is no order as to costs.

(AVINASH G. GHAROTE)
JUDGE

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