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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5983 OF 2019

Jayant Alias Janardan Nivrutti Patil and othersPetitioners

V/s.

Sou. Rekha Ashok Masale and othersRespondents

Mr. Ramdas A. Shelke for the Petitioners

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 26, 2021.

P.C.:

1] In Special Civil Suit No. 27 of 2016, Petitioner-Defendant took out proceedings under Order VII Rule 11 (A)&(D) of the Code of Civil Procedure, 1908 (Hereinafter referred to as 'CPC' for the sake of brevity) vide impugned order dated 01/12/2018 passed by 4th Civil Judge Senior Division, Sangli. Said prayer came to be rejected. As such this petition.

2] The submissions are, Suit for declaration and injunction is

based on an agreement of sale deed dated 11th July 2000. As far as the allocation of Suit property is concerned, in an earlier round of litigation in between Petitioner and predecessor in title of the Respondent-Plaintiff in First Appeal No. 479 of 1990, the issue was answered against the claim in the Suit and that being so, the second Suit for similar relief ought not to have been entertained. Further contention is, during intervening period, certain orders are passed by the revenue authorities adverse to the interest of the Respondent-Plaintiff and that being so, Suit itself is not maintainable. According to him, both these issues are not properly appreciated by the learned trial court.

3] Considered submissions.

4] If the Petitioner-Defendant has come out with a case under provisions of Order VII Rule 11 (A)&(D) of CPC, it is for him to demonstrate that the Suit claim is barred by limitation and also law. The only piece of pleadings which is made by the Petitioner is, that the Suit itself is not maintainable under Section 34 of the Specific

Relief Act and Judgment in First Appeal No. 479 of 1990.

5] I have appreciated the aforesaid contentions as regards non maintainability under section 34 of the Specific Relief Act, however, there is no material to infer that Suit for declaration and injunction at the behest of the Respondent-Plaintiff is not maintainable under the said act. At least no such statutory embargo is demonstrated.

6] As far as Decree passed in First Appeal No. 479 of 1990 is concerned, same is in the form of defence raised by the Petitioner-Defendant to the Suit. It is a settled position of law that while dealing with the prayer for rejection of plaint under the provisions of Order VII Rule 11, court is not required to appreciate the defence.

7] That being so, no case for interference is made out. Petition fails stands dismissed.

[NITIN W. SAMBRE, J.]