

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7006 OF 2017

Baban Govind Kamble

...Petitioner

vs.

Ramdas Lala Kumbhar and Anr.

...Respondents

Dr. Banerji i/b. Ms. Sapana Rachure, for the Petitioner
None for the Respondents

CORAM : N. J. JAMADAR, J.

DATE : JUNE 25, 2021

P.C.:

- . Heard Dr. Banerji, the learned counsel for the petitioner.
2. The learned counsel sought time to take steps to bring the legal representatives of the Respondent No. 1 who is reported to be dead.
3. Notice has not been issued. Hence, the learned counsel for the petitioner was called upon to advance the submissions on the aspect of admission to the petition.
4. The challenge in this petition is to an order passed by the learned Civil Judge Junior Division, Pali dated 14th February, 2017 on an application (Exhibit 16) in R.C.S. No. 07 of 2016 whereby the prayer of the petitioner/defendant No. 1 to reject the plaint under Order VII Rule 11(d) of the Civil Procedure Code, 1908 came

to be rejected.

5. The plaintiff instituted the suit for removal of encroachment allegedly carried out by defendant No. 1/ petitioner by erecting compound and construction, and recovery of possession of the said encroached premises, demarcating the boundaries of the respective premises and also for mandatory injunction to the defendant No. 1 not to release the rain water into the premises of the plaintiff.

6. Dr. Banerji, learned counsel for the petitioner took the Court through the plaint, the application preferred by the petitioner for rejection of the plaint and the impugned order. Dr. Banerji would urge that the learned Civil Judge committed a manifest error in not properly appreciating the fact that the plaintiff averred in the plaint itself that the defendant No. 1 had carried out construction in the year 1997. Thus, the suit instituted in the year 2016 was clearly barred by limitation. Even the case of alleged encroachment is patently false as the plaintiff had carried out the construction in the year 2002-03. Thus, there was no occasion for the alleged encroachment at the hands of the defendant No. 1.

7. Upon perusal of the averments in the plaint, in a meaningful manner, it becomes evident that in paragraph 4 thereof, the

plaintiff had averred that the defendant No. 1 had carried out construction in 1997 without adhering to the building rules as regards the leaving side margin and erected the construction to the edge of the defendant No.1's land. This assertion, in the view of the trial Court, can not be read in isolation and a meaningful reading of the plaint as a whole would indicate that the plaintiff's case was that in the year 1997 the defendant had erected the construction in violation of building rules and the alleged encroachment was committed in the year 2015.

8. The aforesaid view of the Civil Judge appears to be well merited. The fact that the defendant No. 1 had erected construction in the year 1997 upto edge of his land does not imply that there was encroachment over the land of the plaintiff and, thus, the limitation commenced from the year 1997. In any event, the suit is based on title. There are averments which, prima facie, indicate that the defendant No. 1 allegedly committed encroachment in the year 2015 to the extent of 66 x 2 fts.

9. Mr. Banerji further urged that the photographs placed on record by defendant No. 1 clearly indicate that the construction, which was allegedly carried out by way of encroachment, was erected long back. The learned Civil Judge rightly observed that

the said material sought to be pressed into service on behalf of the defendant No. 1 to seek rejection of the plaint cannot be taken in to account for consideration of the prayer for rejection of the plaint. Indeed, it would be a matter for trial.

10. The upshot of aforesaid consideration is that the petition does not deserve to be entertained.

11. Hence, the petition stands rejected.

12. It is, however, made clear that the observations made hereinabove were for the purpose of deciding the limited question of entertainability of the petition and they shall not be construed as an expression of opinion on the merits of the matter and the trial Court shall not be influenced by the said observations.

(N. J. JAMADAR, J.)