

Dadysett Charity Trust & Ors.	..	Applicants
Versus		
Subhash Mahadev Roge & Ors.	..	Respondents
...		

CORAM: BHARATI DANGRE, J.
DATED : 29th NOVEMBER, 2021

P.C:-

1. Heard learned counsel for the applicants.
2. Respondent Nos.1 and 2, has put an appearance through the learned counsel. Learned counsel for the applicants has already filed an affidavit of service on 18/11/2021.
3. The applicants/ defendant Nos.2 to 6 are aggrieved by the order passed by the City Civil Court, Bombay on a Notice of Motion No.3885 of 2014 in L.C.Suit No.2191 of 2006, taken out by them. The Notice of Motion prayed for rejection of plaint on the ground of absence of cause of action to file the instant suit.

Defendant Nos.3 to 5 filed an affidavit in support of the Notice of Motion and pleaded that the description of the suit property is completely vague and it does not disclose any cause of action. It was also pleaded that an earlier suit; being S.C.Suit No.6050 of 2000 filed by the plaintiff, came to be returned for want of jurisdiction and the plaintiff has instituted a suit, making averments which are contradictory and specifically qua the description of the suit property.

4. The said Notice of Motion came to be rejected under the impugned order passed on 10/03/2017 by the learned Judge. The Notice of Motion was opposed by the plaintiff and it was argued that the cause of action is clearly discernible from the reading of the plaint and, therefore, it is not a case that there is no cause of action. When the copy of the plaint in L.C.Suit No.2191 of 2006 is perused, it is apparent that the Municipal Corporation of Gr.Mumbai is impleaded as respondent No.1 and the plaintiff has sought a relief of setting aside the impugned notice and order of demolition of the suit premises issued by the Corporation under Sections 53(1) and 55 of the MRTP Act. Perusal of the prayer clause (a) makes it apparent that what is called in question is the notice issued by the Corporation and the ancillary relief which is sought in terms of prayer clause (b) is extended to the Corporation as well as the other defendants and their servants, though the present applicants i.e. defendant Nos.2 to 5 are impleaded in the suit at a subsequent point of time. In any case, since the primary relief is against the Corporation, which is sought to be restrained from demolishing the portion of the suit premises,

it cannot be said that the plaint is devoid of any cause of action. As far as the *inter se* right of defendant Nos.2 to 4 in the suit property is concerned, it can be contested by them and it is always open for contest and it does not allow rejection of plaint at the very preliminary stage on the specious ground that there is no cause of action available or set out. The learned Judge is perfectly justified in rejecting the Notice of Motion at the threshold, in the backdrop of the relief which is sought.

Learned counsel for the respondents states that the suit has reached at the stage of evidence and this is an additional ground which compelled me to reject the present Civil Revision Application.

5. For the reasons stated above, no indulgence is called for and the Civil Revision Application is dismissed. No order as to costs.

(SMT. BHARATI DANGRE, J.)