

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL REVISION APPLICATION NO. 37/2021

Smt. Karuna Madhukar Deshmukh and ors...Versus...Onkar Narayan Taile

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. S.S.Sitani, Advocate for petitioner

CORAM : AVINASH G. GHAROTE, J.

DATE : 07/12/2021

Heard Mr. Sitani, learned counsel for the applicant, who challenges the order dated 03.03.2021 passed by the learned Trial Court, whereby the application under Order 7 Rule 11(a) of CPC filed by the defendant claiming rejection of the plaint for absence of cause of action has been rejected.

It is contended by Mr. Sitani, learned counsel for the applicant that since the plaintiff/respondent was the counsel for the opponent of Mr. Madhukar Deshmukh in a litigation between the said Madhukar Deshmukh and one Zade, which ultimately has culminated in a compromise dated 20.04.2017, there could never have been any agreement by Mr. Madhukar Deshmukh in favour of the plaintiff/respondent and therefore, there was no cause of action whatsoever requiring the plaint to be rejected.

It is not disputed by the learned counsel that

while considering an application under Order 7 Rule 11(a) of the plaint, what has to be considered are only the plaint averments and nothing else. A perusal of the plaint would indicate that it has been averred that Mr. Madhukar Deshmukh during his lifetime on 22.04.2017 has agreed to sell the suit property to the plaintiff, which is the half share in a plot of land bearing Plot No.3, for a total consideration of Rs. 40,00,000/-, which is claimed to have been paid to the said Madhukar Deshmukh in installments, in respect of which entries of the receipt of the said installments are claimed to have been recorded in the personal diary of Mr. Madhukar Deshmukh. It is further averred in para 9 that an agreement of sale came to be executed by Mr. Madhukar Deshmukh in writing in favour of the plaintiff, in the presence of attesting witnesses, on 22.04.2017 and after the demise of Mr. Madhukar Deshmukh, when the plaintiff approached the legal heirs of Mr. Madhukar Deshmukh to execute the sale deed, on their denial, a legal notice was issued on 11.10.2019, which was received but not replied and therefore, the entire consideration having been paid, a suit for specific performance came to be filed in January, 2020. It is thus apparent that there are specific averments in the plaint regarding the execution of the agreement of sale dated 22.04.2017 as well as the payment of the consideration, and so also the cause of action being a refusal of the legal heirs of Mr. Deshmukh in executing and registering the sale deed, which is contained in para

13 and 15 of the plaint, considering which I do not find that the case of the applicant falls within the parameters of Order 7 Rule 11(a) CPC.

The dictum of the Hon'ble Appx Court in **Rajendra Bajoria and others vrs Hemant Kumar Jalan and others**, Civil Appeal Nos. 5819-5822 of 2021, decided on 21.9.2021, which holds that a reading of the plaint should be meaningful and if clever drafting has created the illusion of a cause of action and a meaningful reading thereof would show that the pleadings are manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, then the court should exercise the powers under Order 7 Rule 11 of CPC, cannot be disputed, however, in light of what has been stated above, regarding the averments in the plaint, in my considered opinion, no case under Order 7 Rule 11 (a) has been made out and the impugned order does not suffer from any infirmity, considering which, as I do not find any merit in the application, the same is dismissed.

JUDGE

rvjalit