

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

CIVIL REVISION APPLICATION NO. 18 OF 2019

- 1] Bhagwansingh s/o Rajatsingh Rajput
Age: 56 years, Occ. Agriculture
R/o. Dhamdod,
Tq. & Dist. Nandurbar
- 2] Pandurang s/o Jagatsingh Rajput
Age: 54 years, Occu. Agriculture
R/o Dhamdod,
Tq. & Dist. Nandurbar
- 3] Rajendra s/o Jagatsingh Rajput
Age: 49 years, Occu. Agriculture
R/o. Dhamdod,
Tq. & Dist. Nandurbar
- 4] Ranjubai Sangramsingh Rajput
Age: 51 years, Occ. Household
R/o. Dhamdod,
Tq. & Dist. Nandurbar
- 5] Shobhabai Bhogesingh Rajput
Age: 44 years, Occu. Household,
R/o. Dhamdod,
Tq. & Dist. Nandurbar
- 6] Bhimkorbai W/o Jagatsingh Rajput
Age: 82 years, Occ. Household,
R/o Dhamdod,
Tq. & Dist. Nandurbar

Nos. 1 to 6 :
R/o Koldar, Tq. & Dist. Nandurbar

... Applicants
(Orig. Deft. Nos. 1 to 6)

VERSUS

- 1] Shabbirkhan Osmankhan Siklikar
Age: 59 years, Occ. Labour
 - 2] Salimkhan Osmankhan Siklikar
Age: 58 years, Occ. Labour
 - 3] Idriskhan Osmankhan Siklikar
Age: 57 years, Occ. Labour
- Nos. 1 to 3 R/o. Behind Gavaliwada,
Tambapura Jalgaon, Tq. & Dist. Jalgaon
- 4] Shamshadbi Pyare Mohd. Shaikh
Age: 70 years, Occ. Household
R/o. Danilimada, Ahmedabad (Gujrat)
 - 5] Irshadbee Yusufkhan Siklikar
Age: 71 years, Occ. Household,
R/o. Old Mehrun Road, Kasamwadi, Jalgaon
 - 6] Khurshidbee Majharkhan Siklikar
Age: 57 years, Occu. Household,
R/o. Momin Mohalla, At Post Nashirabad,
Tq. & Dist. Jalgaon
 - 7] Aflatoonbee Shaikh Osman Siklikar }
Age: 55 years, Occ. Household, } R-7 deleted as per
R/o. Mustafa Colony, Chopda, } Court's order dated
Dist. Jalgaon } 23/08/2019
(RespNo.1 to 7 Orig. Plaintiffs)
 - 8] The State of Maharashtra
Through Collector, Nandurbar
Dist. Nandurbar
 - 9] The Tahsildar, Nandurbar
Tq. & Dist. Nandurbar
 - 10] The Talathi
Dhamdod, Tq. & Dist. Nandurbar

- 11] The Talathi
Ghuli, Tq. & Dist. Nandurbar
- 12] Shaikh Iqbal Shaikh Samad Siklikar
Age: 65 years, Occu. Labour
- 13] Jahangir Shaikh Iqbal Shaikh Samad Siklikar
Age: 42 years, Occu. Labour,
- 14] Nasir Shaikh Iqbal Shaikh Samad Siklikar
Age: 41 years, Occu. Labour
- 15] Ismail Shaikh Iqbal Shaikh Samad Siklikar
Age: 43 years, Occu. Labour,
- 16] Jaitunbee Shaikh Iqbal Shaikh Samad Siklikar
Age: 32 years, Occu. Household,
- 17] Sabir Shaikh Iqbal Shaikh Samad Siklikar
Age: 38 years, Occu. Labour,
- 18] Nargis Shaikh Iqbal Shaikh Samad Siklikar
Age: 30 years, Occu. Household,

No. 12 to 18 R/o Mominwada,
At Post Nashirabad,
Tq. & Dist. Jalgaon

- 19] Shababa Banu Sameer Baig Mirza
Age: 24 years, Occu. Household,
R/o. Near Ruby Kirana Stores,
Chandola Talav, Shah Alam Roza
Ahmedabad
- 20] Parveenbanu Abdul Rashid Siklikar
Age: 22 years, Occu. Household,
R/o. Mohabbatpura, Tajpura,
Himmatnagar (Gujrat)

... Respondents
(Resp.No.8 to 20
Orig. Deft.Nos. 7 to 19)

....

Mr. D. A. Mane, Advocate for applicants

Mr. R. S. Wani, Advocate for respondent Nos. 1 to 6

Mr. S. S. Dande, AGP for respondent Nos. 8 to 11

....

CORAM : R. G. AVACHAT, J.

RESERVED ON : 15th NOVEMBER, 2021

PRONOUNCED ON : 16th FEBRUARY, 2022

J U D G M E N T :-

. Rule. Rule made returnable forthwith and heard finally with the consent of the learned Advocates.

2. The challenge in this revision application is to the order dated 13.07.2018, passed by the learned Civil Judge, Senior Division, Nandurbar on application Exh.48 in Regular Civil Suit No.79 of 2015, for rejection of plaint under Order 7 Rule 11 of the Code of civil Procedure.

3. The facts giving rise to the present revision application are as under:

The applicants herein are the original defendants in a suit, being Regular Civil Suit No.79 of 2015. The respondents No. 1 to 7 herein are the original plaintiffs. The suit has been filed for possession of agricultural land, Gut No.54 and 64, particularly

described in the plaint. It is the case of the plaintiffs in the suit that the lands originally belonged to late Gamir Siklikar, their predecessors in title. Gamir died in February, 1960. His widow – Alishanbi inherited the land Gut No.64 along with her children (plaintiff Nos. 4 to 7). The land Gut No.54 had already been given to Alishanbi as Mehar. Alishanbi being a widow, was unable to cultivate the lands personally. She, therefore, engaged late Govind Rajput, predecessor in title of the applicants herein, to cultivate the lands on crop share basis. Since Alishanbi was widow, late Govind was not held to have purchased the lands on tillers day i.e. 01.04.2015 (deemed purchaser). Alishanbi, therefore, filed application under Section 29 of the Bombay Tenancy and Agricultural Lands Act (BT & AL Act) for possession of land Gut No.54. Late Govind had given a statement before the Tahsildar, expressing his desire to surrender his tenancy rights in respect of Gut No.54. The Tahsildar held that since Alishanbi was a widow, the provisions of BT & AL Act cannot be invoked against her. According to the plaintiffs, late Govind had, in fact, given up his right, title and interest as a tenant. Alishanbi again engaged late Govind to cultivate both the lands on crop share basis. Later on late Govind was shown to have purchased the land Gut No.64 under BT & AL Act. Alishanbi had no notice of the tenancy

proceedings until 2013. The applicants herein would give the plaintiffs income from the land. On demise of Alishanbi, the plaintiffs realized about the so called tenancy proceedings. The suit is therefore filed for possession of the agricultural lands. A prayer for injunction restraining the defendants from alienating the suit lands was also made.

4. The applicants herein had filed application Exh.48 for rejection of the plaint. The application was also shown to have been filed under Section 151 C.P.C. It is their case that as per the averments in the plaint itself, application for possession under Section 29 of the BT & AL Act was filed way back in November 1956. The said application was not allowed. The suit was filed in 2015 i.e. long after November 1956. As such, the suit was barred by limitation. The civil Court did not have jurisdiction to entertain the suit. The authority under the BT & AL Act is competent to decide the issues involved in the suit.

5. The trial Court rejected the application with following observations.

“13. In case in hand, it is the defendants contention that the suit is barred by the law of limitation. However, having regard to over all facts of the case I am of the view that

the issue of limitation is a mixed question of facts and law and as such it needs to have a detailed scrutiny of the evidence. Further, it is alleged by the plaintiffs that the defendants, in collusion with the revenue officials, got the suit land Gat No.64 recorded in the names of Govinda Malha, Jagat Govinda, Pratapsing Govinda and Bhika Manga showing them as purchasers of the said land under Bombay Tenance and Agricultural Lands Act. So, it also requires detailed scrutiny of the evidence. Thus, both the question whether suit is in limitation and whether the defendants obtained the 32M certificate in collusion with revenue officials would be a matter of evidence and as such it can not be said at the threshold that the suit is time barred and the defendants obtained purchase certificate under Section 32M in collusion with the revenue officials. So, in this view of the matter I find that the plaint is not liable to be rejected under Order 7 Rule 11 of the Civil Procedure Code. Hence, I answer point No.1 in the negative and pass the following order.”

6. Heard.

The learned Advocate for the applicants relied on the Apex Court judgment in the case of ***Raghwendra Sharan Singh Vs. Ram Prasanna Singh [Dead] by Lrs*** - in Civil Appeal No.2960 of 2019 to submit that the suit is vexatious one. Jurisdiction of the tenancy authorities has already been invoked. The suit itself, therefore, was not maintainable. He, therefore, urged for allowing the application.

7. The learned Advocate for the respondents – plaintiffs would, on the other hand, submit that it is a suit for possession on title. A relief of perpetual injunction has also been urged for. Relief of

injunction can be granted only by the Civil Court. As such, the suit was very much maintainable. Plaintiff disclosed the cause of action. He, therefore, urged for dismissal of the application.

8. In the case of ***Raghwendra Sharan Singh (supra)***, it is held thus:-

“6.3 In the case of T. Arivandandam (supra), while considering the very same provision i.e. Order 7 Rule 11 of the CPC and the decree of the trial Court in considering such application, this Court in para 5 has observed and held as under:

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits.....”

6.4 In the case of Church of Christ Charitable Trust and Educational Charitable Society (supra), this Court in paras 13 has observed and held as under:

“13. While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the Plaintiff the right to relief against the Defendant. Every fact which is necessary for the Plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the Defendant since in the absence of such an act no cause of action can possibly accrue.”

6.6 In the case of *Sopan Sukhdeo Sable (supra)* in paras 11 and 12, this Court has observed as under:

“11. In I.T.C. Ltd. v. Debts Recovery Appellate Tribunal [(1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

6.7 In the case of *Madanuri Sri Rama Chandra Murthy (supra)*, this Court has observed and held as under:

*“7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only.
.....”*

6.8 In the case of *Ram Singh (supra)*, this Court has observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation.”

9. Considering the law laid down by the Apex Court in the aforesaid decision, the matter in hand is to be considered. Although the suit may not be barred by the law of limitation, it is necessarily vexatious. It also does not disclose the cause of action averred in the suit. It is illusory one. From the averments in the plaint, it is clear that the predecessor in title of the applicants herein was cultivating the suit lands on crop share basis. Tenancy proceeding ensued between the landlady and the predecessor in title of the applicants. It has also been averred in the plaint itself that the 32M certificate was issued in favour of predecessor in title of the applicants, meaning thereby the suit lands have been purchased by the tenant under the tenancy law. The respondents – plaintiffs have even challenged the tenancy proceedings and the appeal is pending before the Collector. As such, there was no cause of action for institution of a civil Suit. So far as regards prayer for injunction restraining the applicants herein from creating third party interest in respect of the suit land is concerned, it is to be stated that it is an interim relief, since the suit is for possession of the lands. A vague averment made in para 7 of the plaint that taking advantage of the revenue record, the applicants herein (defendants) were going to sell the land to a

third person. No details thereof have been averred. When the predecessor in title of the applicants has been held to be deemed purchaser of the suit lands, the prayer for injunction can be said to be illusory one and the suit to be vexatious. In view of the averments in the plaint, the learned Judge therefore ought to have allowed the application under Order 7 Rule 11 of the Code of Civil Procedure. Since same has not been done, the Civil Revision Application deserves to be allowed.

10. Hence, the Civil Revision Application is allowed.

11. The application Exh.48, moved by the applicants herein is allowed and the plaint in Regular Civil Suit No.79 of 2015, stands rejected.

12. Rule is made absolute accordingly.

[R. G. AVACHAT, J.]

SMS