

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

WRIT PETITION NO. 12964 OF 2017

1. Smt. Rukhminibai Janardan Rahinj,
Age : 77 years, Occu. Household.
2. Shri. Chandrakant Janardan Rahinj,
Age : 56 years, Occu. Labour

Both residents of : At Gondegaon,
Taluka Shrirampur, Dist. Ahmednagar.

...Petitioners

Versus

1. Shri. Vitthal Balwant Bhavar
Age : 62 years, Occu. Agriculture
2. Shri. Pundlik Balwant Bhavar,
Age : 60 years, Occu. Agriculture
3. Shri. Babasaheb Pandurang Bhavar
Age : 52 years, Occu. Agriculture
4. Shri. Ravsaheb Pandurang Bhavar
Age : 50 years, Occu. Agriculture
5. Shri. Bhausahab Pandurang Bhavar
Age : 48 years, Occu. Agriculture
6. Shri. Hausahab Laxman Hargude
Age : 69 years, Occu. Agriculture
7. Shri. Pandurang Balwant Bhavar
Age : 80 years, Occu. Agriculture

Nos. 1 to 7 : All residents of Gondegaon,
Taluka Shrirampur, District Ahmednagar.

...Respondents

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Shri. Mukul Kulkarni, Advocate for the petitioners
Shri. A. A. Jagatkar, APP for respondent/State
Shri. K. B. Borde, Avocate for respondent nos. 1 to 5

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CORAM : BHARATI H. DANGRE, J.**DATE : FEBRUARY 04TH, 2022****ORAL JUDGMENT : -**

1. The petitioners are the original plaintiffs who had approached the Civil Judge Senior Division, Shrirampur by filing a suit seeking a declaration of heirship and a relief of possession, in form of a direction to the authorities to take over the possession of the suit property from the defendant nos. 1 to 6 and hand over the same to the plaintiffs. Another relief that was sought was in the form of a declaration for deletion of name of Nazir @ Administrator of property and insertion of name of defendnat no. 7 vide a mutation entry as illegal and a declaration to the effect, that the transactions following the mutation entry are null and void.

2. On the suit being instituted, the Registrar of the Civil Court, notified the objections for registration of the suit on 15.02.2017 to the following effect :

- (i) The Act or Law under which the suit is filed is not mentioned.
- (ii) It is not specified that the Nazir @ the Administrator, the Civil Judge and the District Judge, who are impleaded as the respondents no. 8 to 12, are impleaded in what capacity.

- (iii) The suit is barred by limitation.
- (iv) Since the rent is claimed, the jurisdiction of the Civil Court is barred in law.
- (v) Relevant documents are not produced.

3. The objections specifically notify that the plaintiffs had pleaded that the suit property is not within their possession since 1955 and they have sought a declaration that the sale deed dtd. 21.07.1978 is null and void and, therefore, the suit is clearly beyond limitation. Another objection notified is, the plaintiffs have sought a relief of heirship and, therefore, the court had no jurisdiction to entertain the suit. Thus, the tenability and maintainability of the suit itself was questioned. The plaintiffs/petitioners submitted their written objection in an attempt to satisfy the objections raised by the Registrar about the maintainability of the proceedings.

4. The objections so notified were determined by the learned Civil Judge Senior Division, Shrirampur by treating the same to be the objections under Order 7 Rule 11 (a) & (d) and on arriving at a conclusion that the learned Judge lacked inherent jurisdiction to entertain the suit, which do not disclose any cause of action against the defendants and since the reliefs claimed are absolutely time

barred, and further since the jurisdiction of the civil court is expressly barred by the Tenancy and Agricultural Lands Act, 1948, by specifically recording as under :

"42. As such manifestly relief prayed is meritless and vexatious. The clever drafting created illusion of cause of action. So if it is entertained, it will result nothing but into the multiplicity of the proceedings followed by abuse of process of law." The following order is passed.

"ORDER

1. In view of the provisions of Order 7 Rule 11 (a) & (d) plaint is rejected with costs of Rs. 3000/- to State. Plaintiff is directed to pay the costs through District Legal Aid Services Authority, Ahmednagar for State.
2. Decree be drawn up accordingly.

Pronounced in the open Court.

Shrirampur. Date. 31/03/2017.	Sd/- (Kamala V. Bora) Civil Judge, S. D., Shrirampur"
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. Pertinent to note that this order is passed in the Kaccha Register No. 105 of 2017 on 31.03.2017, thereby declining the registration of the suit.

5. Being aggrieved by the aforesaid order, the petitioners preferred a Civil Appeal before the learned District Court and the

objections were re-notified by the Superintendent of the District Court, Shrirampur about maintainability & jurisdiction and upon which the learned District Judge, adjudicated the same and recording that the plaint was conspicuously silent about the cause of action and the suit was hopelessly barred for disclosure of any cause of action and further it being time barred in seeking a declaration, the order passed by the Civil Judge Senior Division was found to be just and proper in law and the appeal came to be dismissed.

. These two concurrent findings give rise to the present petition and the petitioners before this Court raise an issue whether the appellate Court was justified in considering the merits of the case and arriving at a conclusion that the decision of the trial Court is correct and call for interference, even when the registration of the appeal itself was refused.

6. I have heard learned Counsel Shri Mukul Kulkarni for the petitioner and the learned Counsel for the respondent and perused the copy of the writ petition along with the annexures including the impugned orders.

7. Rule. Rule made returnable forthwith and the petition is taken up for final hearing, by consent of parties.

. The suit filed by the plaintiffs sought the following reliefs.

- “(a) for declaration that plaintiffs are the legal heirs of deceased Sitabai Mahadu and Reubai Mahadu,
- (b) to obtain possession of suit proeprty by defts No.1 to 7 from defts. no. 8 & 9,
- (c) to obtain mandatory directions against defts. no. 8 & 9 to issue notice to defts. no. 1 to 7 for possession, and also for mandatory directions to defts. no. 10 to 12 to issue directions to deft. no.8 & 9 to handover the possession to defts. no. 1 to 7 and for mandatory directions to deft. no. 8 to 11 to hand over possession of suit property to plaintiff,
- (d) to issue direction to defts. no. 12 to 14 to cancel M.E. no. 2389 and to cancel transaction of sale deed, partition effected by defts. no. 1 to 7 on the basis of it.
- (e) for the cost and expenses of the suit.”

8. The perusal of the plaint which seek the above relief narrate the genealogy and describe the property in paragraph no. 3. The main ancestor of the family is described to be one Kushaba Bhavani, who is survived by his son Mahadu and it is pleaded that the occupation of the family was to perform Jagran, Gondhal of Khandoba *deity* and they were moving around the area within the ambit of 100 kms. Moving further, it is pleaded that Mahadu was married to Sitabai and a daughter was born, who died young. Mahadu was having second wife and three sons were begotten and the plaintiffs no. 1 to 3 stake their claim as legal heirs of one Janardhan whereas, plaintiff nos. 4 and 5 are the other two sons,

Manohar and Chandrabhan. The plaintiffs, therefore, stake their claim as heirs of Mahadu through their mother Revubai, his second wife. The plaintiffs plead that Sitabai, the alleged first wife of Mahadu, purchased the suit property from one Sakharam and her name was mutated vide mutation entry dated 18.08.1934. Sitabai died on 10.10.1942 and Mahadu predeceased her on 24.05.1942. After death of Mahadu, name of Revubai came to be mutated on the suit property in 1946-47 and her name came to be recorded by mutation entry no. 1346 on 05.06.1948 as protected tenant as per provision of Section 3A of the Tenancy and Agricultural Lands Act, 1948. The plaintiffs specifically pleaded that her name ought to have been mutated as owner but instead it was recorded as protected tenant and as Revubai died on 27.10.1952, her name was removed from the mutation entry on 18.08.1955 as she was not in possession of the suit property for two years. The claims staked by the plaintiffs is at that time itself the name of her legal heirs i.e. plaintiff nos. 1 to 5 should have been mutated.

9. As per the plaintiffs, the suit properties went in possession of the District Judge, Ahmednagar in Estate Case No. 1/1945 and the name of Nazir @ Administrator was mutated on 05.01.1962. However, these orders were not placed on record and it is only

pleaded that as per order of Civil Judge Senior Division, Shrirampur in Reg. Civil Suit No. 142/1961, the Administrator was directed to take possession of the suit properties from one Shri Waghmare and Shri Kadam in terms of the decree dated 30.06.1962 and accordingly the Nazir obtained the possession on 19.09.1963 and mutation entry no. 2388 was recorded. The plaintiffs claimed that they have obtained heirship certificate in Misc. Application No. 43/2014 on 19.12.2015, under which they are declared as heirs of Sitabai and Revubai Mahadu. The defendant nos. 1 to 5 preferred an appeal against the certificate and since the certificate would serve a limited purpose, they filed a suit for declaration.

10. The cause of action has been pleaded in the suit to be arising at multiple point of time commencing from 05.06.1948, when the name of Revubai Mahadu was mutated as protected tenant instead of owner and further when her name was removed on 18.08.1955, on the ground that she was not in possession of the property for two years after her death on 27.10.1952. The cause of action also is pleaded to have arisen on 23.05.1945 when the possession of the suit properties was taken up by the court in Estate Case no. 1/1945, it is also pleaded to have arisen on 05.01.1962 when the name of the Nazir / Administrator, Kopargaon Court, was

mutated by Tenancy Case No. 1/2913/61. The cause of action is further pleaded to have arisen when decree in RCS No. 142/1961 was passed by the CJSD, Shrirampur on 30.06.1962 directing the Nazir and the Administrator, Kopargaon of Estate Case no. 1/1945 to obtain possession from Shri. Waghmare and Shri. Kadam and mutation entry No. 2388 is effected. It is further pleaded to have arisen on 19.09.1993 when Pandurang Balwanta Bhavar i.e. the defendant no. 2 was put in possession of the suit property and further when the defendant no. 7- Pandurang Balwanta Bhavar effected partition between himself and the original defendant nos.1 & 2 of the remaining portion and mutation entry was effected.

11. On perusal of the plaint, as it read, the learned Judge with reference to the objections raised, recorded that no relief is claimed against the defendant nos. 8 to 12 and defendant no. 13 to 16 and no cause of action is shown to have arisen against them and, therefore, the suit against the said defendants was not maintainable. As far as defendant nos. 1 to 7 are concerned, it was specifically pleaded by the plaintiff that the name of Pandurang Balwanta Bhavar was mutated in the ownership column of the suit property though the plaintiffs were the owners of the property.

12. It is pleaded by the plaintiffs themselves that the defendant nos. 1 to 7 and prior to them one Shri. Kadam and Shri. Waghmae were the tenants of the suit property and even according to the plaintiffs, defendant nos. 1 to 7 were in possession of the suit property as tenants, but since they committed default in paying a rent, the plaintiffs issued a notice of termination of tenancy on 18.11.2016 and this is a cause of action to file the suit. The learned Judge, therefore, recorded that this is ultimately a suit for eviction and in the wake of the provisions of Tenancy and Agricultural Lands Act, 1948, particularly Section 85, the jurisdiction of the civil court is expressly barred.

13. On carefully reading of the plaint, the learned Judge has ascertained the pleadings and he arrived at a conclusion that a case has to be specifically pleaded in support of the relief claimed and the plaintiffs must discharge the burden to prove their case based on the cause of action averred but, since the pleadings in the plaint do not disclose any cause of action to file a suit against all the defendants and ultimately the plaintiffs are challenging the order passed in Estate Case No. 1/1945 dated 23.05.1945, the suit for declaration and mandatory injunction is found to be absolutely time barred. On this ground, by specifically invoking provision of Order 7 Rule 11 (a)

& (d), the plaint came to be rejected, since it is without any cause of action and is an attempt of clever drafting to create an illusion about the cause of action but since it suffer from an inherent defect, it will not entitle the plaintiffs for any relief after going through the procedural rigmarole and since the court was lacking inherent jurisdiction to determine the claim sought in the plaint, the learned Judge has refused the relief and by invoking provision under Order 7 Rule 11 (a) & (d) rejected the plaint and directed the decree to be drawn accordingly.

14. The Hon'ble Apex Court recently in the case of **Rajendra Bajoria v. Hemant Kumar Jalan** (Civil Appeal No. 581-95822/2021) decided on 21.09.2021, has reiterated the law on the point of entertaining a suit which is bound to be dismissed for want of jurisdiction of a court to grant the reliefs and the following observations of Their Lordships of the Apex Court is of great relevance and support me in reaching the conclusion, that since no relief can be granted in favour of the plaintiffs, the learned Judge has rightly rejected the plaint. The Hon'ble Apex Court in paragraph nos. 17 and 18 held as under :

"17. It could thus be seen that the court has to find out as to whether in the background of the facts, the relief, as

claimed in the plaint, can be granted to the plaintiff. It has been held that if the court finds that none of the reliefs sought in the plaint can be granted to the plaintiff under the law, the question then arises is as to whether such a suit is to be allowed to continue and go for trial. This Court answered the said question by holding that such a suit should be thrown out at the threshold."

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(31)

(32) What should the Courts do if it finds that even taking the averments in the plaint at face value, not one of the reliefs claimed in the plaint can be granted? Should the Court send the parties to trial? We think not. It will be an exercise in futility. It will be a waste of time, money and energy for both the plaintiffs and the defendants as well as unnecessary consumption of Court's time. It will not be fair to compel the defendants to go through the ordinarily long drawn process of trial of a suit at huge expenses, not to speak of the anxiety and unpeace of mind caused by a litigation hanging over one's head like the Damocle's sword. No purpose will be served by allowing the suit to proceed to trial since the prayers as framed cannot be allowed on the basis of the pleadings in the plaint. When the court is of the view just by reading the plaint alone and assuming the averments made in the plaint to be correct that none of the reliefs claimed can be granted in law since the plaintiffs are not entitled to claim such reliefs, the Court should reject the plaint as disclosing no cause of action. The reliefs claimed in a plaint flow from and are the culmination of the cause of action pleaded in the plaint. The cause of action pleaded and prayers made in a plaint are inextricably intertwined. In the present case the cause of action pleaded and the reliefs claimed are not recognized by the law of the land. Such a suit should not be kept alive to go to trial."

15. The learned Judge, finding that a suit lack the cause of action and since it is barred by limitation and further by looking to the relief that is sought, is barred by law, has rightly refused the

registration and rejected the plaint. This order has been upheld by the appellate Court, on being assailed, and the appellate Court has independently arrived at a conclusion about the issue of limitation and the jurisdiction of the Court.

. The impugned orders do not warrant any interference and by upholding the same, the writ petition is dismissed. Ruls is discharged.

[BHARATI H. DANGRE]
JUDGE