

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 740 OF 1989

Jamunabai Vesta Varli and ors. Appellants

v/s.

The State of Maharashtra and anr. Respondents

Mr. Atul S. Singh for the Appellants.

Ms. Tanaya Goswami, AGP for Respondent Nos.1 and 2.

Ms. Sonal for Respondent No.3.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 04th JULY, 2022.

P. C. :-

. The Appellants, the Plaintiffs in Suit No.7719 of 1988 have challenged the order dated 21/07/1988 whereby the learned Judge has rejected the plaint under Order 7 Rule 11(d) of the Civil Procedure Code.

2. Heard the learned counsel for the Appellants as well as learned counsel for the Respondents. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The Appellants (hereinafter referred to as 'the Plaintiffs') had filed a suit alleging that they are in possession of land admeasuring 1

acre 17-3/4 Gunthas under Survey No.68, Hissa No.2 and Plot Nos.109 and CTS Nos.303 to 306. The said property shall be hereinafter referred to as 'the suit property'. The father of the plaintiff no.1 was a protected tenant. His name is recorded as 'Kul' in survey records. The plaintiffs claim that they are adivasis and are residing in the structures constructed in the suit property and are cultivating paddy and vegetables in the suit property.

4. The plaintiffs were served with notice dated 03/06/1988 issued by the Tahasildar under Section 50 of Maharashtra Land Revenue Code, alleging that they have encroached and constructed unauthorized construction in the suit property. The plaintiffs were directed to remove the said structures within 7 days from the date of receipt of the notice. The plaintiffs replied to the said notice. The plaintiffs contend that, without considering the reply filed by them, the learned Tahasildar by order dated 13/07/1988 held them to be encroachers.

5. The Appeal filed before the Deputy Collector is pending without hearing. The plaintiffs filed the suit apprehending action in terms of the notice dated 03/06/1998 and order dated 13/07/1980. They

sought declaration that the said notice and order are illegal. The plaintiffs also sought a declaration that they are the lawful co-owners of the suit property and further sought to restrain the defendants from enforcing the implementing the order and/or from evicting them from the suit property.

6. The plaintiffs had filed a notice of motion seeking interim relief to protect their possession pending the suit. The learned Judge dismissed the Notice of Motion by order dated 21/07/1989. While rejecting the notice of motion, the learned Judge, City Civil Court, Greater Bombay has observed that the order dated 13/07/1980 is appealable. The learned Judge held that the plaintiffs have efficacious remedy under the provisions of the Land Revenue Code. Learned Judge held that the suit is not maintainable until and unless the remedies available under the Maharashtra Land Revenue Code are exhausted. Based on these findings, the learned Judge not only dismissed the notice of motion but also rejected the Plaint under Order 7 Rule 11(d) of the Civil Procedure Code. The challenge in this Appeal is restricted to rejection of the plaint.

7. Perusal of the material on record reveals that the issue of

jurisdiction was not raised before the Court. The plaintiffs were not heard on the issue of jurisdiction. The order of rejection of plaint, which was passed without hearing the parties, cannot be sustained. Hence, the matter is remanded to the learned Judge, City Civil Court, Greater Bombay.

8. Considering that the suit is of the year 1988, parties are directed to appear before the City Civil Court on 19/07/2022. Respondent No.3 is at liberty to file an application under Order 1 Rule 10 of Civil Procedure Code. Learned Judge shall decide the Application on its own merits. The issue of jurisdiction, if raised, shall be decided within four weeks from the date of appearance. Interim protection granted by this Court shall continue for a period of four weeks from the date of appearance before the City Civil Court. Appeal stands disposed of. Pending Civil Applications, if any, stands disposed of in view of disposal of the Appeal.

(SMT. ANUJA PRABHUDESSAI, J.)