

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

CIVIL REVISION APPLICATION 526 OF 2019

Pankaj Kumar Gupta	]	
Age 28 yrs, Occ:Business	]	
r/a A Wing, 306, Kasturi Plaza,	]	
Manpada road, Dombivali(E)	]	.. Petitioner.
V/s.		
1. Sou Asha Rajan Mhatre	]	
(since deceased through legal heirs)	]	
	]	
1.1 Rajendra Narayan Mhatre	]	
Age: Adult, Occ : service.	]	
	]	
1.2 Mrs.Reshma Manikandan Nadar	]	
Age-Adult, Occ: Housewife	]	
r/a building No.5, A wing, 202,	]	
Vaishnavai Sai Complex.	]	
	]	
1.3 Mrs.Rupali Jeevan Patel,	]	
Age 26 yrs, Occ: Housewife,	]	
r/a road no.2 Charandev Pada,	]	
Tanali, Aadarsh Nagar,	]	
Aarey Milk Colony, Goregaon	]	
(F) Mumbai-400 065.	]	
	]	
1.4 Ajay Rajendra Mhatre	]	
Age 24 yrs, Occ:	]	
	]	
1.5 Vijay Rajendra Mhatre-son	]	
Age 22 yrs, Occ:	]	
Respondent 1.1, 1.4 and 1.5	]	
r/a village Acholgaon	]	
Bilapada, Nalasopara, Mumbai.	]	
	]	
2. Mohammad Hamid	]	
Gulam Husen Sayyad	]	
Age 47 yrs, Occ:	]	
r/a Manpada Police Station,	]	
behind Golavligaon	]	

Tal-Kalyan, Dist-Thane.	]	
	]	
3. Arya Vikram Rajaram Singh	]	
Age 47 yrs, Occ:	]	
r/a Golavi MIDC, Dombivli	]	
Tal-Kalyan, Dist- Thane.	]	
	]	
4. Dhondurama Bhoir	]	
Age 76 yrs, Occ:	]	
r/a Golavli MIDC, Dombivli	]	
Tal-Kalyan, Dist- Thane.	]	.. Respondents

Ms Preeti Walimbe, Advocate for petitioner.

CORAM : ROHIT B. DEO, J.

DATE : 26 JULY 2022.

P.C.

1. Exception is taken to an Order dated 25.2.2019 rendered by the learned Joint Civil Judge, Junior Division, Kalyan (the trial Judge) whereby the application preferred by the Petitioner, who is the Defendant 2 in Regular Civil Suit No.808/2012, under Order VII Rule 11 (a) of the Code of Civil Procedure, 1908, is rejected.

2. The suit property is an agricultural land assigned Survey 121 which is situated at village Dawadi, Taluka-Kalyan, District-Thane.

3. Plaintiff's averments begin by making a reference to Regular Civil Suit No.517/2002 instituted by the plaintiff for declaration that the Power of Attorney executed by Gotiram Bhoir dated 9.8.2002 is null and void and further declaration that the plaintiff is not bound by the Decree in R.C.S. 422/1995 to the extent of subject property. The

plaint avers that R.C.S. 517/2002 is subjudice and there is a *status-quo* order in operation against Gangabai Gaikwad and Others. It is further averred that the *status-quo* orders dated 21.1.2003 and 9.12.2004 in R.C.S. 517/2002 operate against defendants 1 to 13.

4. It is then averred that the Defendant 1 is the adjacent owner and the Defendant 2 claims to have purchased land admeasuring 24 guntha from the Defendant 1 by a Sale Deed dated 10.2.2012. Similarly, defendant 3 and others claim to have purchased the land admeasuring 48.76 R guntha from defendant 2 by an Agreement dated 27.12.2011.

5. In sum and substance, case of the plaintiff is that the defendant 1 to 4 had started illegal construction towards North side of the suit property thereby impinging upon the plaintiff's proprietary rights. The plaintiff claims that construction is started on land owned by plaintiff and her relatives and as a co-owner the plaintiff is entitled to initiate action. The plaintiff further claims that the defendants threatened her with forcible dispossession and continued the illegal construction. It is specifically pleaded that the defendants tried to commit tress-pass and attempted to forcibly dispossess the plaintiff, in breach of the *status-quo* orders operating.

6. The defendant 2 preferred subject application on the premise that the plaint does not disclose a cause of action. The defendants submitted that the plaintiff is not the owner of the suit property and is not entitled to maintain civil action. In conclusion, the defendants specifically submitted that all legal heirs of Baliram Bhoir including the plaintiff acting through the Constituted Attorney have conveyed

the suit property in favour of Vicky Rupchandani by Sale Deed dated 19.08.2013 and mutation entries are duly effected on the basis of Deed of Conveyance, which is suppressed. In conclusion, the defendant 2 contended that the plaintiff has no locus to maintain the suit.

7. Learned trial Judge noted the recitals of the plaint and found, and rightly, so that averments in the plaint are sufficient to disclose the cause of action.

8. Learned Counsel for the petitioner-defendant 2 reiterated the submissions which did not find favour with the learned trial Judge and additionally emphasised on the Certificate purportedly issued by the Revenue Authority declaring that the suit property is owned by Vicky Rupchandani and not by plaintiff. Learned Counsel would contend that in this view of the matter, the plaintiff can not maintain the suit since he has no right or interest in the suit property.

9. It is difficult to agree with learned Counsel for the petitioner-defendant 2. It is too well settled to warrant an elaborate reference to plethora of authorities holding the field, that the consideration while dealing with the application under Order 7 Rule 11 of the C.P.C, must necessarily to be restricted to the plaint averments or documents which are deemed to be part of the plaint. I am not required to, and indeed such exercise is impermissible in law, look into the defence. The document on which the learned Counsel for petitioner-defendant no.2 is relying is not placed on record by the plaintiff. It is the defendant no.2 who is relying on the said document to substantiate the defence.

10. It is further well settled that there is a distinction which is judicially recognized between failure to disclose the cause of action and cause of action which may be defective or without substance. The plaint must be ready holistically to determine whether the cause of action is disclosed. I have no doubt in my mind that the averments in plaint are more than sufficient to disclose the cause of action on the basis of which declaration and injunctive relief is claimed. Whether the plaintiff shall be in possession to prove the averments in the plaint, is a matter which must be left for the learned trial Judge to dilate open after the parties adduce evidence. At this stage, averments in plaint that plaintiff is the owner and in possession of the suit property, that defendants are carrying out illegal construction contrary to judicial orders and that construction is attempted on land owned by plaintiff with intent to dispossess her, are sufficient to disclose the cause of action.

11. I see no error in the view taken by the learned trial Judge. Keeping all contentions open for the trial judge to adjudicate at appropriate stage after the parties adduce evidence, the Revision Application is dismissed.

(ROHIT B. DEO, J.)