

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

WRIT PETITION 8393 OF 2022

Smt. Shobha Shreepati Sathe & Ors.	...	Petitioners
<i>Versus</i>		
Seema Anand Sathe & Anr.	...	Respondents

**WITH
WRIT PETITION 8394 OF 2022**

Vikas Prakash Agarwal	...	Petitioner
<i>Versus</i>		
Seema Anand Sathe & Anr.	...	Respondents

Mr. Devendranath S. Joshi for the Petitioners in both Petitions.
None for the Respondents.

**CORAM : ROHIT B. DEO, J.
DATE : 18th JULY, 2022**

P.C. :-

. These petitions emanate from the proceedings in Regular Civil Suit 287 of 2021, involve common issues of fact and law and are therefore disposed of by this common order.

2. Regular Civil Suit 287 of 2021 is instituted by Mrs. Seema Anand Sathe for declaration and permanent injunction.

3. The declaration sought is that Mrs. Seema Anand Sathe (plaintiff) is entitled to enforce rights of preemption *qua* the suit

property and the perpetual injunction sought is that the purchaser of the suit property Mr. Vikas Prakash Agarwal be restrained from disturbing the plaintiff's possession *qua* the suit property.

4. Defendant 3 is the son of the plaintiff. The right of preemption is asserted against defendants 1, 2 and 4 to 6.

5. The suit property is described as agricultural land admeasuring 2 hectares which is part of portion of entire land admeasuring 9.72 HR which is assigned Gut 361 situated in Takli Haji village, Tal. Shirur, Dist. Pune.

6. The plaintiff has set out the family tree. Mr. Shreepati Tukaram Sathe, who is the father-in-law of the plaintiff, was the original owner of the suit property. The plaintiff states that Mr. Tukaram Sathe went missing thirty years prior to the institution of the suit and is presumably dead. Defendant 1 – Mrs. Shobha Shreepati Sathe is the widow of deceased Mr. Shreepati Tukaram Sathe. The couple had two sons Mr. Vilas and Mr. Anand and a daughter Mrs. Manisha. Mr. Vilas is the defendant 2, Mr. Anand was the husband of the plaintiff, who is no more, and Mrs. Manisha expired in 2014 leaving behind her husband Macchindra - defendant 4 and children Rohan and Pallavi, who are

defendants 5 and 6 respectively. The plaintiff asserts that as class I legal heir she has share and interest in the suit property, since she is the widow of the deceased son of Mr. and Mrs. Sathe.

7. The plaintiff asserts that the suit property is in joint possession of the members of the family and there is no partition effected. The plaintiff asserts that after her husband Mr. Anand expired eight years prior to the institution of the suit, it is the plaintiff who is in physical and cultivating possession of the suit property. The plaintiff then asserts that the defendants 1 and 2, in collusion with defendant 7 manipulated the revenue entries and on the basis thereof agreement of sale dated 24th July, 2020 was entered into between defendants 1 and 2 and defendant 7 which was got executed by defendant 7 from defendants 2 and 4 to 6. The plaintiff asserts that to the extent of her undivided share in the suit property, the transactions supra do not bind her. The plaintiff then asserts that the defendant 7 got executed registered sale deed dated 30th April, 2021, which for reasons noted supra do not bind the plaintiff to the extent of her share and interest in the suit property. It is broadly on the basis of such averments, that the plaintiff is claiming the enforcement of the right of preemption and perpetual injunction.

8. Defendants 1, 2 and 4 to 6 preferred application (exhibit 30) under Order VII, Rule 11 of the Code of Civil Procedure, 1908 (for short 'Code) for rejection of the plaint on the ground that no cause of action is disclosed. The purchaser – defendant 7 preferred similar application (exhibit 23). The learned Trial Judge rejected both the applications exhibit 30 and exhibit 23 by separate orders both dated 21st March, 2022. These orders are impugned herein.

9. The defendants 1, 2 and 4 to 6 sought rejection of the plaint on the ground that no cause of action is disclosed and that the plaint is liable for rejection under Order VII, Rule 11(a) of the Code. It is contended that the right of preemption can be claimed only after the partition of the suit property and since partition is not prayed, no cause of action is disclosed.

10. Defendant 7 has invoked the provisions of Order VII, Rule 11(b) of the Code. Defendant 7 contended that since the plaintiff is claiming right of preemption she is required to pay Court fees on the basis of valuation of the suit property. It is further contended that since the possession of the suit property is handed over to the defendant 7, the right of preemption can be enforced only if the sale deed is declared as null and void. Defendant 7 further contended that since no declaration

that the sale deed is null and void is claimed, the plaintiff is not entitled to relief. In conclusion, defendant 7 contended that by clever drafting, the plaintiff is attempting to evade payment of Court fees.

11. The learned Trial Judge reasoned that there is a well recognized distinction between the plea that there is no cause of action and the plea that the plaint does not disclose the cause of action. The learned Trial Judge took a resume of the plaint averments and concluded that the plaint does disclose cause of action and rejected the application preferred by the defendants 1, 2 and 4 to 6, seeking rejection of plaint. Considering the application preferred by the purchaser – defendant 7, the learned Trial Judge observes thus :-

“9. In the present matter the plaintiffs have valued the suit for the purpose of court fee and jurisdiction at Rs.2000/- and paid stamp of R\$.400/-. Since the plaintiff claims the relief of declaration and for perpetual injunction, then obviously it is clear that the suit is properly valued and proper court fees stamp has been paid by the plaintiff. Secondly, defendant has contended that, the suit is not maintainable on the ground that, the plaintiff has not sought the partition in the ancestral property. However, I am of the view that this aspect would be considered during the trial and moreover on this count the suit can not be thresh holdly rejected. However, this is not a ground as mentioned in order 7 rule 11 (b) of the code of Civil Procedure to reject the plaint. Hence, I pass the following order;

ORDER

01. The application below Exh.23 is hereby rejected.

02. No order as to costs”

12. Mr. D. S. Joshi, learned counsel for the petitioners in both the petitions reiterated the submissions which did not find favour with the learned Trial Judge. The learned counsel relied on the decision in ***Ramlal Maniram Navdhinge v/s. Maniram Patiram Navdhinge & Ors., 2008 (1) ALL MR 699***, to buttress the submission that since the plaintiff did not claim partition, the right to preemption is not available and therefore the plaint does not disclose cause of action.

13. It is well settled that power under Order VII, Rule 11 (a) can be exercised only if the plaint, on holistic reading, does not disclose cause of action. Plaint cannot be rejected on the ground that the cause of action is defective or that the cause of action pleaded is without substance. In the factual matrix, the question of partition as such does not arise. The entire property is sold. The plaintiff is asserting the right of preemption in respect of the entire suit property. It cannot be said that the plaint does not disclose cause of action.

14. The decision in ***Ramlal Maniram Navdhinge*** (supra) which is pressed in service is of no assistance to the petitioners. The learned Judge who authored the said decision observes that since the succession had not opened and the defendant 1 – the father of the plaintiff, was alive, the provisions of Section 22 of the Hindu

Succession Act do not come into plaint.

15. The relevant observations in **Ramlal Maniram Navdhinge** (supra) read thus :-

“It is thus clear that section does not apply until successions opens. Defendant No. 1 father of the plaintiff is still alive. It is only heirs of deceased who get a right under section 22. Since the father is still alive and the property is said to be ancestral and not self acquired in the hands of father, there is no application of section 22 at all. It must therefore be said that atleast on this count the plaint does not at all disclose any cause of action.”

16. In the present case, the case of the plaintiffs is that with the death of Mr. Shreepati Tukaram Sathe the succession opened and as his legal heir, she is entitled to claim the right of preemption.

17. The other reason recorded by the learned Judge who decided **Ramlal Maniram Navdhinge** (supra), for confirming the order of rejection of plaint, is that the Karta of the family has the right to transfer the property and such transfer could have been challenged only to the extent of the share of the plaintiff and by filing a suit for partition. In my considered view, the observations in **Ramlal Maniram Navdhinge** (supra) must be restricted to the facts of that case.

18. In my considered view, the applications under Order VII, Rule 11 cannot be decided as if the Court is conducting a mini trial. I do not

find the claim an abuse of the process of law or a claim which is doomed to inevitable failure. While, *ex-facie* vexatious litigation must indeed be nipped in the bud, in the interest of saving precious judicial time and sparing the litigants from the agony and trauma of facing frivolous litigation, the power must be exercised with due caution and only if a compelling case is made out of non-disclosure of cause of action. That, the claim may ultimately fail due to defects of form or substance is not necessarily decisive. In my considered view, it would more appropriate to keep the contentions open for the learned Trial Court to address at an appropriate stage.

19. For reasons recorded, the objections which are raised by the defendants 1, 2, 4 to 6 and defendant 7 – purchaser and on which grounds, the rejection of the plaint is sought, are kept open for the learned Trial Court to address at an appropriate stage.

20. The petitions are dismissed with the clarification that the contentions are kept expressly open for the learned Trial Court to decide at an appropriate stage.

[ROHIT B. DEO, J.]

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