

SHALIKRAM
PRALHADRAO
BOREY

Digitally signed
by SHALIKRAM
PRALHADRAO
BOREY
Date: 2022.07.19
18:21:04 +0530

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

CIVIL REVISION APPLICATION 188 OF 2022

Smt. Rekha Shashikant Deo & Anr. ... Applicants.

V/s.

Shri Janakkumar Amrutlal Joshi ... Respondent.

Mr. S. R. Ghanavat, Advocate for the Applicants.

Ms. Simaran Jagadia, Advocate i/by S. V. Sadavarte for
Respondent.

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

PC :

1. This civil revision application is directed against the order dated 30.03.2022 rendered by the learned Joint Civil Judge, Jr. Division, Rajgurunagar, below exhibit 28 in Regular Civil Suit 104 of 2021, whereby the application preferred by Defendant 1 under Order 7 Rule 11 of the Civil Procedure Code (Code) is rejected.

2. Regular civil suit 104 of 2021 is brought by the Plaintiff for perpetual injunction, restraining the Defendants from disturbing the possession of the Plaintiff as regards the suit property without following due process of law.

3. The case of the Plaintiff broadly stated is that on 01.01.2008 deceased Mr. Shashikant Mahadeo Deo and his wife - defendant 1 executed an agreement in favour of the plaintiff where under the suit property was leased out. The plaintiff contends that since then the plaintiff is in peaceful and continuous possession of the suit property and till the end of 2020 the monthly rent was duly paid to the deceased - Shashikant Mahadeo Deo and defendant -1.

4. The plaintiff then claims that in March, 2021, the defendants threatened to dispossess the plaintiff and a police report was duly lodged at Alandi police station. It is on the basis of such allegations that the plaintiff is seeking perpetual injunction, restraining the defendants from interfering with the possession, save and except in accordance with the law.

5. The defendants 1 and 2 preferred an application under Order 7 Rule 11 of the Code, the substratum of which is that on 25.02.2021, the defendants have executed the sale deed of the suit property in favour of Mrs. Shantabai Laxman

Yelwande and therefore, there is no cause of action against the defendants. The other contention is that the agreement of lease dated 01.01.2008 is not registered nor is the agreement sufficiently stamped. A vague statement is made that the suit is barred by limitation.

6 The learned trial Judge was pleased to reject the application under Order 7 Rule 11 of the Code, interalia, relying on the decision of the Apex Court in **Dehiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra), Dead- Thr. Lrs. & Ors.** [(2020) 7 Supreme Court Cases 366].

7. I have heard the learned counsel for the parties and with their able assistance the averments in the plaint are perused. Having done so, I am satisfied that the order impugned does not suffer from any infirmity whatsoever.

8. The suit is for injunction simpliciter on the basis of the apprehension of illegal dis-possession. Defence is immaterial. Consideration for deciding an application under Order 7 Rule 11 of the Code, must be restricted to the plaint

averments and the documents which are deemed to be part of the plaint. The defence that the property is sold cannot be looked into and in any event is absolutely irrelevant in the context of the frame of the suit and the relief claimed. The suit is clearly within limitation since the cause of action is the threatened dispossession in March, 2021.

9. The objection on the basis of the insufficient court fee is rightly rejected by the learned trial Judge, considering the nature of the relief claimed.

10. I am satisfied that the Civil Revision Application is absolutely without any substance, and the same is dismissed.

(ROHIT B. DEO, J.)

.....