

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

CIVIL REVISION APPLICATION NO.668 OF 2019

Adniyan Sidhram Gaikwad

..Applicant

Versus

Baban Maruti Hinge and Ors.

..Respondents

Mr. Sachin S. Punde, for the Applicant.

Mr. S. C. Wakankar a/w Ms. Vaniti J. Pandit, for Respondent No.1.

CORAM : NITIN W. SAMBRE, J.

DATE : 18th JANUARY, 2022

PC.

1. The respondent No.1/plaintiff initiated Regular Civil Suit No.207 of 2016 on the file of Civil Judge Junior Division, Ghodnadi (Shirur), District Pune for declaration and injunction. In the suit, declaration is sought that the plaintiff has 8 Anna share as per sale-deed dated 5th July, 1969 in the suit property and the applicant/defendant shall not interfere with the possession of the plaintiff.

2. The applicant/defendant invoked provisions of Order VII Rule 11 of CPC taking shelter of Section 29 of the Maharashtra Project Affected Persons Act alleging that the Civil Court has no jurisdiction to entertain the suit. The said application Exh.23 is rejected vide impugned order dated 11th July, 2019. As such, this petition.

3. The submissions of learned counsel for the applicant are that Section 29 of the Maharashtra Project Affected Persons Act puts an embargo on the powers of Civil Court in entertaining the suit in relation to issues for which remedy is provided under the Act. According to him, the issue in the plaint is required to be settled/decided or dealt with by the authorities viz. Director, Commissioner, Deputy Director, Resettlement Officer or the State Government. According to Mr. Sachin Punde the aforesaid provisions are squarely applicable to the pleadings and relief claimed in the plaint and that being so, the suit is not maintainable as such plaint be rejected. He would further urge that the suit for one more reason must fail as the respondent/plaintiff is not exclusive owner of the suit property as is already adjudicated in independent civil proceedings.

4. In the aforesaid background, I have perused the pleadings in the plaint and relief claimed therein.

5. The reliefs claimed in the plaint are based on the sale-deed of the plaintiff dated 5th July, 1969. As far as the land in question which according to the applicant is affected by virtue of the suit is allotted to him/released out of the acquisition by the authorities order. He has invited my attention to that effect i.e. order passed by the Divisional Commissioner on 8th June, 2011 in favour of the respondent/plaintiff. Vide said order the land to the extent of 1 Hectare 63 Are was released and further 80 Are land was allotted in favour of Shri. Baban Hari Umratkar.

6. The claim of the respondent No.1/plaintiff in the plaint since is based on sale-deed dated 5th July, 1969, the claim put forth by the applicant in the aforesaid background under Section 29 of the Act thereby praying rejection of the plaint, in my opinion, is not justified. The fact remains that authorities under the Act cannot consider and grant relief claimed in the suit. Apart from above, the contention of Mr. Sachin Punde to the reference to the aforesaid order passed by the Divisional Commissioner will be of hardly any consequences for invoking provisions of Section 29 of the Act against the plaintiff for the reasons narrated herein above. In response to Court's query, petitioner is unable to satisfy this Court as in what manner/legal provision of the Act the remedy is provided to the plaintiff for redressal of his grievance raised in the suit. The further contention of Mr. Sachin Punde that the respondent No.1/plaintiff is already declared as not exclusive owner of the suit property is also not required to be gone into at this stage. Such declaration will not operate as *res-judicata*, as in the said case applicant is admittedly not a party to the said proceedings. That being so, no case for interference in the extraordinary jurisdiction of this Court is made out.

7. The revision application as such stands dismissed.

[NITIN W. SAMBRE, J.]