

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Civil Revision Application No. 34 of 2020

- (1) Bandu s/o Anna Tamnar
Aged about 50 yrs, Occ.
Agriculturist.
- (2) Horma Bandu s/o Anna Tamnar
Aged about 48 yrs, Occ.
Agriculturist.
- (3) Barkabai s/o Soma Tamnar
Aged about 46 yrs, Occ.
Agriculturist.

Applicant 1 to 3 are the
R/o Dhamangaon Deshmukh,
Tq. - Motala, Dist – Buldhana

... Applicants

... **Versus** ...

- (1) Samadhan s/o Nago Ingle
Aged about 77 yrs, Occ.
Agriculturist. R/o Dhamangaon
Deshmukh, Tq. - Motala,
Dist – Buldhana
- (2) Vishvanath s/o Nago Ingle
Aged about 68 yrs, Occ. Labour.
R/o Ward no. 2, Bhim Nagar,
Tq. & Dist – Buldhana.
- (3) Sachin Prakash Ingle
Aged about 25 yrs, Occ. Labour.
- (4) Chaya Prakash Ingle
Aged about 22 yrs, Occ. Labour.
- (5) Laxmi Prakash Ingle
Aged about 20 yrs, Occ. Labour.

- (6) Satish Prakash Ingle
Aged about 65 yrs, Occ. Labour.
- (7) Dnyandeo s/o Nago Ingle
Aged about 19 yrs, Occ. Labour.
- (8) Smt. Bebabai Prakash Ingle
Aged about 50 yrs, Occ. Housewife.
- (9) Govinda s/o Vithoba Bichkule
Aged abt – Adult, Occ. Agriculturist.
- (10) Balu s/o Dhondu Bichkule
Aged abt – Adult, Occ. Agriculturist.
- (11) Bhila s/o Dhondu Bichkule
Aged abt – Adult, Occ. Agriculturist.
- (12) Tanaji s/o Dhondu Bichkule
Aged abt – Adult, Occ. Agriculturist.
- (13) Vijay s/o Mansaram Bichkule
Aged abt – Adult, Occ. Agriculturist.

Applicant 3 to 13 are the
R/o Dhamangaon Deshmukh,
Tq. - Motala, Dist – Buldhana

- (14) Talathi, Dhamangaon Deshmukh,
Tq. - Motala, Dist – Buldhana
- (15) Tahsildar, Dhamangaon Deshmukh,
Tq. - Motala, Dist – Buldhana
- (16) Deputy Superintendent of Land
Records, Dhamangaon Deshmukh,
Tq. - Motala, Dist – Buldhana
- (17) State of Maharashtra through
Collector, Buldhana, Collector
office, Buldhana, Tq. District -
Buldhana.

(18) Deputy Director of Land Records,
Amravati Division, Tq. -
Dist- Amravati.

(19) Sub Divisional Officer, Malkapur,
Dist – Buldhana

(20) Executive Engineer, Irrigation
Department Buldhana,
Dist – Buldhana

(21) Hemant Rama Kokle,
Aged about – 35 years,
Occupation – Agriculturist,
R/o – Nagzhari Khurd,
Tq. Khamgaon, Dist. Buldhana.

... Respondents

Mr. A. M. Tirukh, Advocate for the applicants
Mr. A. Z. Jibhkate, Advocate for respondents 1 to 8
Ms. T. H. Khan, A. G. P for respondents 14 to 19

CORAM : ROHIT B. DEO, J.

DATED : 30-3-2022

ORAL JUDGMENT

Rule. Rule made returnable forthwith. The petitions are heard finally with consent of the learned counsel appearing for the parties.

2. The applicants are the defendants 1 to 3 in Regular Civil Suit 3/2017 which is brought by respondents 1 to 8 – plaintiffs seeking decree of mandatory and perpetual injunction.

3. Defendants 1 to 3 preferred an application under Order VII Rule 11 of the Code of Civil Procedure (CPC) for rejection of the suit

plaint, which is rejected by the learned trial Judge by order dated 10-7-2020, which is impugned herein.

4. The application under Order VII Rule 11 (Exhibit 74) which is rejected by the order impugned, was a successive application. Earlier, defendants 1 to 3 filed application (Exhibit 31) for rejection of plaint which was rejected by the learned trial Judge vide order dated 22-9-2017.

5. Before I advert to the application which is rejected by the order impugned, it would be relevant to note that the earlier application for the same relief was preferred on the grounds :

- (1) that the plaint does not disclose cause of action,
- (2) the cause of action, which is disclosed, is barred by limitation,
- (3) the suit is under valued and
- (4) the suit is barred by the provisions of Section 158 of the Maharashtra Land Revenue Code (Code).

The other objection was that certain persons were not made parties to the suit.

6. The learned trial Judge, while rejecting the earlier application, was alive to the settled position that the consideration must be restricted only to the plaint averments and the documents on which

the plaintiff relies. Considering the objection which is premised on the law of limitation, the learned trial Judge held that the question is a mixed question of fact and law and that it would not be appropriate to reject the plaint without affording opportunity to the plaintiff to adduce evidence. The learned trial Judge referred to the earlier civil suit which came to be withdrawn and reasoned that the effect of the prior litigation will have to be adjudicated. The learned trial Judge further rightly held that the plaint cannot be rejected on the premise that the suit is under valued. The question of rejection of the plaint will arise only if after an adjudication, the plaintiff is directed to pay deficit Court Fees, and the plaintiff does not comply with such direction. The objection that the jurisdiction of the civil court is barred in view of the provisions of Section 158 of the Code was rejected on the premise that the mistake of the revenue officer which has made the plaintiff landless is apparent and such mistake is admitted by the Tahsildar, Motala in the order dated 24-10-2016. In essence, although not observed in so many words, the trial Court has proceeded on the premise that an illegal or void act of the revenue officer can always be questioned in civil suit.

7. It is an admitted position that the order dated 22-9-2017 assumed finality since the defendants did not challenge the said order.

8. Undeterred by the rejection of the earlier application, defendants 1 to 3 preferred another application, Exhibit 74, seeking rejection of plaint. In paragraph 2, the averment is that there is no cause of action. A reference is made by the defendants 1 to 3 to the provisions of Section 158 of the Code. The objection in paragraph 3 is again premised on the basis of Section 158 of the Code, and as noted *supra*, the said objection is considered and rejected while disallowing the earlier application for identical relief. Paragraph 4 again rakes up the issue of limitation, which was already considered earlier.

9. I am satisfied that the only intent was to protract the litigation. Apart from the fact that the objections were by and large raised earlier and rejected, it is well settled that plaint cannot be rejected in a piecemeal manner. The plaintiff is not only claiming to be the owner of the suit property, he is further claiming to be in possession and is seeking injunctive relief. The issues which are raked up by defendants 1 to 3 have no relevance in so far as the entitlement of the applicants to seek injunctive relief on the basis of possession of the suit property.

10. Learned counsel, Mr. Tirukh would rely on the decision of the Supreme Court in *Rajendra Bajoria and others Vs. Hemant Kumar Jalan and others* in *Civil Appeal Nos. 5819-5822 of 2021 dated*

September 21, 2021 and particularly, paragraph 14 and 19 of the said decision. The said paragraphs read thus :

*“14. We may gainfully refer to the observations of this Court in the case of **T. Arivandandam v. T.V. Satyapal and Another** (supra):*

*“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. **The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC.** An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:*

“It is dangerous to be too good.”

[emphasis supplied]

19. We are in complete agreement with the findings of the High Court. Insofar as the reliance placed by Shri Jain on the

*judgment of this Court in the case of **Dahiben** (supra), to which one of us (L. Nageswara Rao, J.) was a member, is concerned, in our view, the said judgment rather than supporting the case of the plaintiffs, would support the case of the defendants. Paragraphs 23.3, 23.4, 23.5 and 23.6 in the case of **Dahiben** (supra) read thus:*

“23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

*23.4. In Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLineGuj281 : (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words :
(SCC p. 324, para 12)*

“12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.”

11. In my considered view, the decision on which reliance is placed does nothing to further the case of the defendants 1 to 3.

12. In paragraph 14 of the decision, reference is made to the observations in *T. Arivandandam* which are reproduced. The observations articulate the well settled position of law that if illusion of cause of action is created by clever drafting, the litigation must be nipped in the bud. Paragraph 19 of the decision refers to *Dahiben v. Arvindbhai* and certain observations in *Dahiben* are reproduced verbatim. All that is observed is that the court is in complete agreement with the findings of the High Court and that *Dahiben* supports the defendants rather than the plaintiffs, considering the factual matrix. It is difficult to appreciate what the learned counsel is attempting to emphasis by referring to paragraphs 14 and 19 of the decision in *Rajendra Bajoria* supra.

13. In the present matter, I am more than satisfied that the plaint does disclose a cause of action, that it cannot be said on plain reading of the plaint that the suit is barred by limitation, and *prima facie* the suit is also not barred by the provisions of Section 158 of the Code. In any event, as observed earlier, the relief sought cannot be dissected and the plaint cannot be rejected in part. Viewed from any perspective, the revision is sans merit and is dismissed with costs of Rs. 10,000/- (Rupees Ten Thousand) to be deposited in the trial Court within the next two weeks.

14. The learned trial Judge shall ensure that the direction to deposit costs is duly complied with by defendants 1 to 3.

15. The trial court shall expedite the suit and finally dispose of the same as early as possible, and in any event, within the next six months.

16. No adjournment shall be granted unless an exceptional case is made out.

JUDGE

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Digitally signed by AVINASH
YUVRAJ WASNIK
Signing Date: 01.04.2022 16:05