

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRA NO.87 OF 2017

**DADASAHEB WAMAN PAWAR AND OTHERS
VERSUS
ANKUSH @ HANUMANT EKNATH PAWAR AND OTHERS**

Mr. S. S. Bora, Advocate for the applicants
Mr. S. Y. Mahajan, Advocate for respondent No.1.

CORAM : R. M. JOSHI, J.

DATE : 29th MARCH, 2023

PER COURT :-

1. This application filed under Section 115 of Code of Civil Procedure taking exceptions to order dated 01/03/2017 passed by Jt. CJJD, Jamkhed below Exhibit 43 in RCS No. 111/2012.

2. The brief fact leading to the present case can be narrated as under,

. Ankush Pawar, plaintiff, filed suit for declaration and injunction in respect of the suit property bearing gut No. 186 (old Survey No. 20) and 11 situated at Bavi, Jamkhed. It is contended therein that their ancestor Yashwant was protected tenant in respect of gut No. 186. Yashwant had 5 sons. There is further pleading to the effect that after death of Yashwant gut No. 186 (old Survey No. 20) was mutated by showing name of Bhanudas as *Karta* of the joint family. Thereafter, name of Waman came to be mutated in the revenue record as occupier. There

is a reference in the pleadings about the tenancy proceeding between Waman and original owner and orders passed therein. It is further stated that the portion went to the original owner was purchased from the joint family income on 24/10/1959 and mutation is recorded vide entry No. 439. It is also averred that suit property is jointly cultivated by all.

3. Defendants filed application under Order VII Rule 11 contending that the suit is barred by law. After hearing both sides learned Trial Court rejected the application by passing impugned order.

4. Learned counsel for applicants states on the basis of pleadings in the plaint suit cannot be maintained and ought to have been rejected under Order VII Rule 11 CPC. He further argued that name of Waman, father of applicants herein was recorded as owner of property and after period of almost 50 years said proceeding cannot be challenged and that Civil Court cannot go into the correctness of said orders. According to him under garb of seeking declaration order passed by Tenancy Authority cannot be challenged. He claims that suit is barred by law as well as limitation.

5. For the purpose of deciding application under Order VII Rule 11. There is no dispute about the fact that only clause (d) is invoked by defendant, since, except for the suit being barred by law no other

objection is raised by the defendant regarding maintainability of the suit. Perusal of the pleadings indicates that there is specific pleading taken by the plaintiff stating that originally in respect of suit land, Yashwant, ancestor of the plaintiffs and defendants was protected tenant. Further pleadings are taken in order to show how the name of Waman came to be mutated in respect of the said land and also about the purchase of the portion of land went to the share of the original owner with joint family income. There is further pleadings about joint possession and cultivation of land by all and obstruction caused to plaintiffs by defendants.

6. The jurisdiction of Civil Court to entertain any suit for injunction cannot be disputed. Plaintiffs herein on the basis of averment of joint possession and cultivation of suit lands seeks prohibitory order against the defendants. Cause of action spelt out on the plaint indicates that it occurred on 15/07/2012, when defendants obstructed cultivation of plaintiffs in these lands. These issues raised by plaintiffs can be decided only after recording evidence. In so far as contention of the counsel for the applicant that it would be beyond to the jurisdiction of the civil Court to decide question of tenancy or to interfere in the order passed by the tenancy authority is concerned, in such eventuality, such question can be referred to the Revenue Authorities. Hence even for that reason the suit cannot be held to be not maintainable.

7. Having regard to the pleadings in the plaint and facts and circumstances appearing there from this Court finds no perversity in the impugned order. Hence application is dismissed. No order as to costs.

8. It is clarified that the issues raised by the respective parties are kept open for the consideration on merit during trial.

(R. M. JOSHI, J.)

ssp