

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

CIVIL REVISION APPLICATION NO.113 OF 2023

Param Developers,
Behind Tandoor Hotel,
Railway Station Road through
Its Partners-

1. Parmeshwar Santaram Rajbinde,
Age : 36 Years, Occ. Business,
R/o. Railway Station, Road,
Aurangabad.
2. Avtarsingh S/o Indersingh Sodhi,
Age : 69 Years, Occ. Business,
R/o. Shahnoorwadi, Aurangabad.
3. Rohit S/o Vivek Deshpande,
Age : 37 Years, Occ. Business,
R/o. Plot No. 53/54, Aditya Nagar,
Garkheda, Aurangabad.

.. Applicants
(Original Defendants)

V E R S U S

Akruti Consultancy Services
Through its Prtners -

- 1) Avinash S/o Ganpatrao Solapure,
Age : 55 Years, Occ. Business,
R/o. 122, Krishna Apartment,
Jyoti Nagar, Aurangabad.
- 2) Pravin S/o Bapuarao Mhaske,
Age : 45 Years, Occ. Agri and
Business, R/o. Rama Nagar,
Aurangabad.
- 3) Rahul S/o Sitaram Kharat,
Age : 40 Years, Occ. Business,
R/o. Narali Bagh, Aurangabad.

.. Respondents
(Original Plaintiffs)

...
Advocate for Applicants : Mr. Sonpethkar Pradip Narayanrao A
Advocate for respondent Nos. 1 to 3 : Mr. Faruk Vajir Shaikh
...

CORAM : S. G. MEHARE, J.

DATE : 09.10.2023

ORDER :

1. Heard the learned counsel for the applicants and the learned counsel for the respondent Nos. 1 to 3.
2. The applicants have impugned the order of the learned 9th Civil Judge, Junior division, Aurangabad, passed below Exhibit No. 11 in Regular Civil Suit No. 261 of 2023, dated 06.05.2023 filed by the present applicants under Order VII Rule 11 of the Code of Civil Procedure.
3. Initially, the applicants had raised the ground that from the documents filed on record and pleading of the plaintiffs/ respondent Nos. 1 to 3, it is clear that the plaintiffs/respondent Nos. 1 to 3 did not have possession over the suit property. In view of that matter, the suit is not maintainable and liable to be dismissed/plaint is to be rejected, as it was barred under Section 41 of the Specific Relief Act. However, by an application dated 24.03.2023 file before passing the impugned order, the present applicants have raised the additional grounds for

rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure. He has raised the objection that the plaintiff is claiming right on the basis of a so-called agreement. The agreement of sale does not confer any right in favour of anybody. There is no cause of action to file the suit. The plaintiffs/ respondent Nos. 1 to 3 have no right to file the suit as they have no right in the suit property. Hence, the plaint is liable to be rejected.

4. The contesting respondents, Nos. 1 to 3, have opposed the application.

5. The learned counsel for the applicants has vehemently argued that the order impugned before this Court is without any reason; hence, it is bad in law. He would further argue that the suit is not maintainable as the objection under Order XXI Rule 97 of the Code of Civil Procedure is pending in the execution proceeding filed by the predecessor-in-title of the present applicants. He also argued that the construction of the building on the plot claimed by the applicants as the owner has reached up to the 5th floor. He relied on the case of ***The Church of Christ Charitable Trust & Educational Charitable Socety, represented by its Chairman Vs. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee 2012 AIR SCW 4136.***

He further relied on the judgment of the Hon'ble Supreme Court in *Civil Appeal No. 8088 of 2022, dated November 9, 2022, in the case of Delhi Development Authority vs. Asha Jain and others.* He has also vehemently argued that the learned trial court did not consider his submission made the written notes of arguments. He has also placed its copy on record.

6. Per contra, the learned counsel for the plaintiffs has vehemently argued that the case has a chequered history. He submits that the present plaintiffs filed a Regular Civil Suit No. 1067 of 2014, to which the appellant was the defendant. The said suit was against one Om Sahakari Gruha Nirman Sanstha and was filed against the present plaintiffs. The said suit was compromised. Out of the total land of 46 R, the present plaintiffs had purchased 25 Are land. However, the plaintiffs did not perform the settlement terms of the compromise. Hence, the execution proceeding was filed against Om Sahakari Gुरुहा Nirman Santha for the execution of the sale deed of a land measuring 25 R out of 46 R. One lady Dr. Manju Parsil Jilla, moved an application under Order XXI Rule 97 of the Code of Civil Procedure. The said application is still pending. She came with a plea that she was the owner of the portion of the land arising out of the suit land and sold it to the present applicant, Param Developers. It is also not

disputed that the objector Dr. Maju Parsil Jilla, moved an application for adding Parm Developers as a party. However, the said application was rejected. Thereafter, the present respondent Nos. 1 to 3 had moved an application for temporary injunction claiming the relief against Param Developers for restraining them not to raise construction over the portion of the land which Dr. Manju Jilla was claiming to be the owner. Neither the order rejecting an application for adding the present applicant as a party nor the rejection of the temporary injunction application filed by the present respondent Nos. 1 to 3 were challenged. He has further submitted that his temporary injunction application against the present applicants was rejected because he is not a party to the proceeding. Hence, the present suit was filed to protect the interest of the present respondent Nos. 1 to 3. She has alleged that the learned trial court has elaborately discussed the facts and relevant provisions of law and correctly held that the plaint is not liable to be rejected under Order VII Rule 11 of the Code of Civil Procedure, and any law does not bar the suit. The case laws relied upon by the applicants are totally irrelevant. The learned trial Court has considered the facts of the case. The Court has not acted illegally in the exercise of jurisdiction, and there is no material irregularity.

Therefore, under Section 115 of the Code of Civil Procedure, the revision application cannot be considered.

7. During the course of the arguments, the Court had asked a question to the learned counsel for the applicant, that the cause of action for filling the suit is to be gathered from the pleadings in the plaint. He fairly conceded this legal proposition. The Court again asked him how the right of the plaintiffs could be denied as pleaded. So, he made a statement at the bar that he gives up the ground of no cause of action to the present suit.

8. The learned trial Court framed points for determination and answered that the plaint is not liable to be rejected under Order VII Rule 11 of the Code of Civil Procedure and also negated the ground that any other law barred the suit.

9. While considering the application of the present applicants, the learned trial court discussed the contingency required to be considered. The facts have been considered while considering the application under Order VII Rule 11 of the Code of Civil Procedure. The trial Court held that the plaintiff/ respondent Nos. 1 to 3

continuously possessed the suit property and hence rejected the application.

10. The facts of the case of *Ramisetty Venkatanna And Another Vs. Nasyam Jamal Saheb and Others (2023) 5 S.C.R. 589* were that one Nasyam Jamal Saheb was the owner of 4 acres 16 cents of land in Survey No. 700/A7B and Survey No.706/A9 of Nandyal Town. After the demise of Nasyam Jamal Saheb, his five children partitioned the said properties by way of a registered document. Thereafter, there were some registered gift deeds. The predecessor in interest of the plaintiff Ibrahim got 1 acre, and the predecessor in interest of vendors of the appellant Sarambee got 1 acre 16 cents, and she claimed to be the exclusive owner of the said land arising out of Survey No. 706/A9. Sarambee has disposed of that property by gift in favour of her daughter Ashabee and two sons. Thereafter, three sons of Ashabee partitioned the land measuring 58 cents each of the sons got 19.22 cents of land each. After the death of one Kareembee, who was the mother of the vendor of the appellant, her three sons effected an oral partition among themselves. Her two sons Khatif Khaja Hussain and Khatif Noor Ahammed sold the land in Survey No. 706/A9 to the extent of 58 cents vide two registered sale deeds dated 24.08.2010 in favour of the appellants for a valid sale consideration of Rs. 14,52,000/- and Rs. 13,56,000/- respectively and the possession of the said land was handed over to the appellants, and they developed the land. Then, three sons of Kareembee had filed a suit against her two other sons and the appellants between the partition and separate possession of their share in the property so sold to the

appellants therein. The said suit was settled in the Lok Adalat. Thereafter, in 2013, the Municipality proposed widening the road whereby 3.5 cents of the appellants' land was affected. The appellants executed a registered gift deed in favour of Nandyal Municipality. In return, the Municipality awarded TDR (transferable development right to the appellants), and the relief claimed in the plaint was for the cancellation of the registered sale deed and for declaring the title of the plaintiff in the suit property within the boundaries mentioned in the plaint schedule which is in survey No. 700/A7B and 706/A9. An application under Order VII Rule 11 of the Code of Civil Procedure was filed by the appellants and dismissed by the trial court and the High Court.

10. On the the above facts, the Hon'ble Supreme Court held that the order rejecting an application under Order VII Rule 11 of the Code of Civil Procedure is unsustainable. The same deserves to be quashed and set aside and are, accordingly, quashed and set aside. The Hon'ble Supreme Court discussed the various pronouncements on Order VII Rule 11 of the Code of Civil Procedure. It has been held that considering the facts of the case, the suit was hopelessly barred by limitation having been instituted after the lapse of 61 years from the partition deed.

11. The facts of this case are altogether different. In this case, the applicants have claimed that the suit is barred under Section 41 of the Specific Relief Act. Section 41 of the said Act speaks of the grounds when the injunction is refused. In this case, the issue is also different.

12. As discussed above, the facts were that in an execution proceeding, the predecessor in title of the present petitioner/applicant had moved an application under Order XXI Rule 97 of the Code of Civil Procedure, claiming exclusive title over some portion of the land arising out of the suit property. She had given the description of the land she had purchased from the predecessor-in-title, and as per the agreement between the plaintiff and defendant in R.C.S. No. 1067 of 2014, the property described by her has partly gone to the share of the parties to that compromise. Her application is still pending. During the pendency of that application, she transferred her land to the present petitioner/applicant. Her application to add the present petitioner was rejected. An injunction application against the present application filed by the petitioner/applicant in the execution proceeding was also rejected on the sole ground that the petitioner/applicant is not a party to that proceeding. In this situation, the present suit has been filed. On reading the plaint averments, it is clear that the cause of action already arose to seek the relief against the applicant. However, for technical

grounds, the temporary injunction was refused against the present petitioner/applicant in the execution proceeding. The right of the predecessor-in-title of the present petitioner/applicant has not yet been decided. Section 41 of the Specific Relief Act, as discussed above, mentions the grounds for refusing the application for the injunction. Whether the plaintiff or party in the suits are entitled to the injunction is a matter of merit, and that may be a defence. The dispute and the suit were not between the same parties. The present respondents, Nos. 1 to 3, are claiming the title over the land through Dr. Manju Jilla, whose title is not finally decided. Since the execution court declined to grant a prohibitory injunction against the present respondent Nos. 1 to 3 as he was not a party to the executing proceeding or the original suit, the only remedy lying with the present respondent Nos. 1 to 3 is to file a separate suit. The present petitioner/applicant has the right to protect his property. Hence, the Court is of the view that any law does not bar the suit. It is correct that the agreement to sell does not confer any right or title in favour of any party, but the fact remains that the predecessor-in-title of the present respondent Nos. 1 to 3 had a title document, and by way of compromise decree, the right and title of the present respondent Nos. 1 to 3 have been adjudicated and recognized. A bare formality of creating a document of sale deed remained, and an

execution proceeding was filed. So, at this juncture, it cannot be said that the present Respondents Nos. 1 to 3 have no right or interest in the suit property in the suit and in the execution proceedings.

13. Considering the facts of this case and facts of the case of Bangalore Development Authority Vs. N. Nanjappa and another 2022 SCEJ 1418 and Delhi Development Authority cited (supra) that the ratio laid down in that case is not applicable to the case at hand. The impugned order is well reasoned; the learned trial Judge did not commit any illegality and material irregularity in exercising its powers.

14. For the above reason, the revision application stands dismissed.

(S. G. MEHARE)
JUDGE

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