

Pooja K.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 144 OF 2022

Digambar Rama Dalve and Anr.	... Applicants
<i>Versus</i>	
Maroti Gangaram Dalve and Anr.	... Respondents

...
Mr. A.D. Hande – Advocate for Applicants
Mr. A.S. Kulkarni – Advocate for Respondents
....

CORAM : GAURI GODSE, J.
DATE : 24th February, 2023

PER COURT :

1. This Civil Revision Application is filed by the defendants for challenging the rejection of the application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908. (“CPC”)
2. The respondents filed Regular Civil Suit No.43 of 2019 for declaration of ownership as well as injunction. The applicants appeared in the suit and filed application under Order VII Rule 11 of CPC for rejection of Plaint on the ground that there is no cause of action pleaded in the plaint and that the suit was barred under the Provisions of Bombay Prevention of Fragmentation

and Consolidation of Holding Act, 1947 ('said Act'). The respondents had filed their say and opposed the said application. The learned Civil Judge Senior Division, Mudkhed by judgment and order dated 10th September, 2020 had considered the objections of the applicants and rejected the application under Order VII Rule 11 of CPC. The learned Trial Court has held that a suit is barred under the provisions of Section 36-A (I) of the said Act, only with respect to any question that is required to be settled or dealt with which is arising under the said Act. The Trial Court held that, the present suit is not with respect to any of the issues required be dealt and decided with under the said Act. With respect to the cause of action the learned Trial Judge has held that the suit discloses the cause of action and hence there is no reason to reject the plaint as prayed by the applicants.

3. Learned counsel for the applicants submitted that, perusal of the plaint shows that there are no contentions raised with respect to the cause of action that is pleaded in the plaint and hence it cannot be a proper cause of action for filing the suit. He further submitted that, the suit filed by the respondents amounts to

encroaching upon the powers of the concerned authorities under the said Act. He, therefore, submitted that, reasons recorded by the learned Trial Judge for rejecting the application under Order VII Rule 11 of CPC are erroneous. Hence, interference with the impugned order is warranted in this Civil Revision Application.

4. Learned counsel for the respondents submitted that, the learned Trial Court has specifically held that the plaint discloses cause of action in paragraph nos.15 and 20. He submitted that none of the prayers in the Suit are required to be dealt with under any of the provisions of the said Act. Hence, the learned Trial Judge rightly rejected the application filed by the applicants.
5. I have considered the submissions made by both the parties. I have perused the plaint. Paragraph nos.15 and 20 of the plaint discloses the cause of action with respect to the prayers for declaration of title and injunction. The prayers with respect to declaration and injunction are not within the purview of the issues that are required to be settled and decided under the said Act. The suit is based on title and the reliance on the relevant entries under the said Act are pleaded only in support of the

contentions raised in the plaint. Hence, none of the prayers in the plaint can be said to be covered within the jurisdiction of the said Act. Hence, I do not see any reason to interfere with the findings recorded by the learned Trial Judge.

6. The learned Trial Judge considered the objections raised by the applicants and by a well reasoned order has rejected the application. Perusal of the plaint shows that the same cannot be rejected at the threshold either on the ground that it is barred by any of the provisions of the said Act or that there is no cause of action. It is well established principle of law that the merits of the cause of action cannot be decided under the provisions of Order VII Rule 11 of CPC. What is required to be verified is only whether there is a cause of action pleaded in the plaint. Perusal of the plaint shows that it discloses cause of action. The merits of the cause of action will be decided at the time of trial of the suit and the same cannot be gone into under the provisions of Order VII Rule 11 of CPC. As stated herein above, none of the prayers in the suit can be decided and dealt with by the authority under the provisions of the said Act. Hence, there is no question of applicability of bar of jurisdiction under

Section 36(A) of the said Act. For the reasons recorded above, I do not find it necessary to interfere with the impugned order in the limited jurisdiction under Section 115 of the Code of Civil Procedure.

7. There is no merit in the submissions made on behalf of the applicant. Hence, Civil Revision Application is dismissed.

[GAURI GODSE]
JUDGE