



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

WRIT PETITION NO. 12958 OF 2023

Pandit Mansing More and others .. Petitioners

Versus

Vaishnavi Satish Patil and others .. Respondents

Shri Sambhaji S. Tope, Advocate for the Petitioners.

CORAM : SHAILESH P. BRAHME, J.

DATE : 14TH DECEMBER, 2023.

FINAL ORDER :

. Heard the learned counsel for the petitioner. Order dated 03.08.2023 passed below Exhibit 82 in Spl. C. S. No. 14 of 2018 by the learned Civil Judge Senior Division, Chalisgaon is questioned in the present writ petition. The petitioners are the original defendants in the suit for specific performance of contract filed by the respondents.

2. The suit is founded on two agreements to sell dated 25.07.2011 executed in favour of the plaintiffs/respondents. The petitioners claim to be belonging to the Scheduled Tribe. They filed application Exhibit 82 U/O VII Rule 11 of the Code of Civil Procedure (for the sake of brevity and convenience hereinafter referred as to the "C.P.C.") contending that as the suit land is the tribal's land the alienation is impermissible and prohibited under Section 36 and 36-A of the Maharashtra Land Revenue Code (for

the sake of brevity and convenience hereinafter referred as to the “Code”). Application Exhibit 82 is rejected.

3. The learned counsel for the petitioners submits that the petitioners belong to the Scheduled Tribe and there is restriction on transfer U/Sec. 36 and 36-A of the Code. No previous sanction has been obtained from the Collector. Therefore, this case is covered by Order VII Rule 11 of the C.P.C. He would submit that Section 36-C of the Code bars jurisdiction of the Civil Court, which falls within the scope of Clause (d) of Rule 11 of Order VII of the C. P. C.

4. He further submits that the agreements were executed as security for hand loan was taken from the respondents. The suit in the present form is contended to be not tenable because it suffers from non-joinder and mis-joinder of the necessary parties.

5. The learned counsel for the petitioners has criticized the findings recorded by the learned Judge in the impugned order castigating the conduct of the petitioners. He submits that in the absence of any material it is not permissible to cast aspersions against the petitioners for receiving earnest amount twice with oblique motive and dilatory tactics. The findings in paragraph No. 11 and 19 are stated to be perverse. The reliance is also placed upon the roznama to challenge the findings.

6. The provisions of Order VII Rule 11 of the C. P. C. can be

resorted to for rejecting the plaint, which according to me is a very drastic step. Unless a case squarely made out within the parameters laid down in Rule 11 of Order VII of the C. P. C., the plaint cannot be thrown out of the Court at the threshold. The averments of the plaint are relevant for the enquiry U/O VII Rule 11 of the C. P. C. which is settled position of law. In the present matter from the pleadings of the parties and the material produced on record it appears that there was no permission of the Collector for the transfer. The learned Collector has granted permission for a transaction with a third person Sandip not related to the respondents.

7. The suit is founded on agreements executed on 25.07.2011. The agreement to sell is not a transfer. Therefore, what is contemplated U/Sec. 36, 36-A and 36-C of the Code is a transfer. It is not that the alienation is absolute bar under the Code. The lands belonging to the scheduled tribes can be said to be inheritable and transferable. In case of transfers previous sanction of the Collector is contemplated. Therefore, plaint cannot be objected at this stage purely on Section 36 and 36-A of the Code. The learned Judge has rightly recorded findings in paragraph No. 12 to that effect.

8. The learned counsel has invited my attention to bar created by Section 36-C of the Code. The jurisdiction of the Civil Court is barred dealing with the questions which fall U/Sec. 36, 36-A or 36-B of the Code. These questions are to be settled by

the Collector. In the present matter Civil Court and this Court is of considering suit for specific performance of contract, which is within jurisdiction of the Civil Court. The civil Court is not dealing with the entitlement of the parties as per Section 36, 36-A or 36-B of the Code. I am of the considered view that Section 36-C of the Code cannot be made applicable.

9. The learned counsel has made submissions regarding the nature of transaction, non-joinder/mis-joinder of necessary parties and entitlement of the respondents for the relief claimed in the suit. These can be defences of the petitioners which can very well be dealt with during the course of trial. The scrutiny before the Civil Court and this Court pertains to Order VII Rule 11 of the C. P. C. It is impermissible to look into the written statement and pleas raised therein. Therefore, submissions in this regard are devoid of any substance.

10. The learned counsel for the petitioner has invited my attention to paragraph Nos. 12 and 19 to submit that the observations of the learned Judge are unwarranted and unsustainable. I find substance in the submissions of the learned counsel. The conduct of the parties is irrelevant in an enquiry U/O VII Rule 11 of the C. P. C. The learned Judge should not have commented upon the conduct of the petitioners. The conduct has to be observed and not recorded at this juncture. Just because the conduct of the petitioners is castigated, that would not help them to succeed in enquiry U/O VII Rule 11 of

the C. P. C.

11. The findings recorded by the learned Judge cannot be faulted. It is rightly recorded that validity of argument cannot be gone into at this stage. I do not see any perversity or error of jurisdiction. The most of the submissions of the learned counsel for the petitioner are required to be considered during the course of trial or at the stage of final hearing. The learned Judge has taken plausible view. There is no reason for this Court to interfere in the same. The writ petition is dismissed.

12. Needless to mention that observations recorded by this Court are *prima facie* in nature.

[SHAILESH P. BRAHME, J.]

bsb/Dec. 23