

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.85 OF 2023

Vitthal Hariba Adagale (deceased)
through LR Smt.Sangita Vitthal Adagale

... Applicant

Versus

Bhagwan Shripati Sul and Others

... Respondents

— —
Mr. Rohit P. Karhadkar, for the Applicant.
Mr. Amit A. Karande for the Respondents.
— —

CORAM : SHARMILA U. DESHMUKH, J.

DATE : July 5, 2023.

P. C. :

1. Heard.
2. The Applicant questions the order dated 7th December, 2022 passed in Regular Civil Suit No.3 of 2015, rejecting the applicant's application filed under Order-VII Rule 11 of the Code of Civil Procedure, 1908 (for short, "CPC").
3. In the application filed under Order-VII Rule 11(a) of the CPC, it is the case of applicant that the property described in the plaint as joint property of Plaintiff and Defendant No.4 admeasuring

0.67.16R is not Gat No 195/1/A seen in the map. It is his case that the property is described in rough hand-sketch map as ABCD, which is vague and ambiguous and neither the boundaries are shown. As such the plaint is barred by law in view of the provisions of Order-VII Rule 3 of CPC. The second contention is that illegal partition is shown as regards the Plaintiff and Defendant No.4, and thirdly that no official survey map is filed. It was contended in the application that the plaintiff has shown separate area of the property of the plaintiff and defendant no.4 by showing partition illegally, whereas in fact, the property is joint property. With these contentions, the application in question has been filed seeking rejection of plaint under the provisions Order-VII Rule 11 of the CPC.

4. The submission of the learned counsel for the Applicant is that the area which is mentioned in the sale deed does not match the description of property contained in the plaint. He would further point out the rough map which is annexed to the plaint and would contend that the same does not set out the details of property. He further points out that the plaintiff claims encroachment on the property, however, without the property being sufficiently identified, no relief in that respect can be claimed. He draw supports from the provisions of Order-VII Rule 3 of the CPC. He has further pointed out

that in respect of the suit property as disclosed by the sale deed, there are other owners and that the property is not partitioned and, as such, in the absence of other co-owners, the suit as such is not maintainable.

5. *Per contra*, learned counsel appearing for the Respondent No.1-plaintiff points out that for the purpose of an application under Order-VII Rule 11, only the averments in plaint are required to be noted. He would further contend that the averments in plaint disclose a cause of action and as such, the trial Court has rightly rejected the application.

6. Considered the submissions of the parties.

7. It is settled position in law that for the purpose of deciding the application Order-VII Rule 11 of CPC, only the averments in plaint are relevant. Perusal of the copy of plaint in Regular Civil Suit No.3 of 2015 discloses that the plaintiff has come with a case that the suit property in question is Gat no.195/A, admeasuring 00.67.16 R and as per the rough map, the plaintiff and his co-owner defendant no.4-Rajesh Shantilal Zende are having 0.67.60 R area, which is marked on the map as ABCD. Thereafter, the plaintiff's suit described the sale deed which has been executed between the

parties. It is further averred that defendant no.3 has started the construction on the property of plaintiff on 7th January, 2015, and again encroached upon the property of plaintiff and has attempted to construct the compound wall. On this premise, the suit has been filed by the plaintiff and in paragraph 6 of the plaint pertaining to the cause of action, it is averred that defendant no.3 has encroached upon the property purchased by the plaintiff on 7th January, 2015 and has started the construction of new compound wall.

8. On meaningful reading of the plaint, it is evident that plaintiff has first pleaded the facts relating to his ownership of property by relying upon the sale deed and after having done so, has averred about the incident which has taken place on 7th January, 2015, which is the cause of action for filing the present proceedings. The provisions of Order-VII Rule 11 (a) comes into play when the plaint does not disclose a cause of action. Learned counsel appearing for the Applicant submits that the property has not been identified and, as such, the suit for encroachment was not maintainable. There is a distinction between absence of cause of action and the maintainability of the suit for the reason of non-identification of property.

9. As regards the description of property is concerned, if the property is not properly identified, the plaintiff will not be entitled to decree. However, it cannot be said that because the boundaries are not identified as stated, the suit is liable to be rejected for non disclosure of cause of action. Reliance placed by the learned counsel for the Applicant on the provisions of Order-VII Rule 3 of CPC is misplaced. The provisions of Order-VII Rule 3 of CPC provide that the plaint shall contain the description of property sufficiently to identify it and if the property can be identified by the boundaries, the plaint shall specify the boundaries of property. The Trial Court where adjudicating the application under Order-VII Rule 14 has considered the provisions of Order-VII Rule 3 as well as the decision of this Court in ***Nari Shringar Big Bazar vs. Pantaloon Retailing (India) Ltd. [2008 (4) ALL MR 394]***, wherein this Court has held that the plaint could not be rejected for non-compliance of Rule 3 of Order-VII of the CPC.

10. Considering the above, in my opinion, there is no infirmity in the impugned order dated 7th December, 2022 warranting any interference. The Civil Revision Application stands dismissed.

(Sharmila U. Deshmukh, J.)