

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.285 OF 2023

Hukamsingh Ramdularesingh Rajput & Anr.

...Applicants

Versus

Pramod Kumar Dixit & Anr.

...Respondents

Ms. Sneha S. Bhange for the Applicants.

Coram : Sharmila U. Deshmukh, J.

Date : July 31, 2023.

P. C. :

1. Heard.
2. The challenge in the Application is to the order dated 2nd March, 2023 rejecting the Application filed under Order 7 Rule 11 (a) and (d) of the Code of Civil Procedure, 1908.
3. Learned counsel appearing for the Applicants submits that in the building which is constructed by the Respondent-Plaintiff, the Applicant has purchased a flat on the 2nd Floor being Flat No. 8 and the suit has been preferred seeking an injunction against the Defendants from creating any third party right or causing any destruction or carrying out alterations to the Flat No. 8 property. She would further contend that the averments in

the plaint if taken in its entirety does not disclose cause of action and as the flat in question has been purchased prior to 10 years, the suit is barred by limitation. Learned counsel for the Applicants submits that the suit is also barred by virtue of the provision of section 41(f), (g) & (h) of the Specific Relief Act, 1963. Learned counsel appearing for the Plaintiff submits that no relief in respect of the Applicants own property can be sought without seeking a declaration, as far as the title is concerned. She would further contend that the decision of the Apex court in the case of **Dahiben vs Arvinbhai Kalyanji Bhanusali**¹ lays down the proposition that if the suit is merely vexatious and would not result in a decree being passed, the suit is required to be rejected by exercising the power under Order 7 Rule 11 of the CPC.

4. Considered the submissions.

5. Regular Civil Suit No. 153 of 2021 has been instituted in respect of suit property 1A & 1B seeking restraining orders against the Defendants and for recovery. The suit property which has been described as suit property 1A is three storey building known as “Dixit Residence” excluding flat No. 8. The suit property 1B has been described as flat No. 8 which is the property purchased by the Applicants. It is averred that the

¹ (2020) 7 SCC 366

flat No. 8 was sold to the Applicant vide registered sale deed dated 22nd July, 2013. It is further averred that apart from the flat No. 8 the Applicants do not have any right to use the open space or the balcony on the third floor. It is averred that the Applicants and their family members trespassed into the suit property 1A and threatened and abused the Plaintiffs and have also caused destruction to the building and the other vehicles. It is averred that as regards the balcony which situated on the third floor the latch of the terrace was damaged by the Applicants for which the Plaintiff has suffered a cost of Rs. 11,000/-. It is averred that in the parking area the Plaintiff has afixd the CCTV Camera and the Applicants without having any right had afixd another CCTV Camera in the parking area which is owned by the plaintiff, without the consent of the Plaintiff. It is averred that the privacy of the Plaintiff is infringed by the CCTV Camera in which the images of the Plaintiff's house are captured. It is the averred that there are police complaints which were filed on 24th March, 2021 and on 4th July, 2021 against the Petitioner. It is further averred that on 11th July, 2021 the Applicants trespassed into the parking area of suit property 1A and had destroyed the Plaintiffs articles or furniture. It is with this case that the Applicant has filed the Regular Civil Suit No. 153 of 2021.

6. The Application for dismissal has been filed on the ground that the suit is bad in law and it is barred by law of limitation and also that it does not disclose any cause of action. Perusal of the plaint shows that there are two suits properties, suit property 1A and 1B. As regards the suit property 1A, the admitted position is that the Plaintiff is the owner of the property and due to the incidents which have been taken place on 24th April, 2021 and 4 July, 2021, police complaints have been filed and as such, the suit has been instituted seeking restraining orders against the Petitioners. The plaint in question cannot be said to not disclose cause of action.

7. Learned counsel Appearing for the applicant wants this court to go into the merits of the averments of the plaint and came to a finding that based on these averments decree cannot be passed as regards prayer for injunction in respect of suit property 1B. As regards the decision in the case of *Dahiben* cited (supra) this was one of the test which was required to be carried for considering whether the decree would have been passed. However it is to be noted that in the Application filed under Order 7 Rule 11, the Court is not expected to conduct the mini trial and go into the merits of the allegation to come to a finding that based on the averments no decree would be passed. In the present case, the Trial Court by

deciding the Application has rightly considered the pleadings of the plaintiff and has observed that the same discloses the cause of action on 24th April, 2021, 4th July, 2021 and 11 July, 2021, as on these dates the Defendants had caused destruction of the properties and also that NC's filed in that respect is already on record.

8. As held by the Apex Court in case of *Sejal Glass Ltd. vs Navilan Merchants Pvt. Ltd.*, [(2018) 11 SCC 780] the plaintiff cannot be rejected in part. Even if it is assumed that no relief can be granted as regards suit property 1B. Considering that the reliefs are also sought in respect of Suit property 1A, the plaintiff cannot be rejected in part and whole suit will have to go to trial.

9. The Application under Order 7 Rule 11 also seeks dismissal on the ground that the suit is barred by law of limitation. Considering that the incidents have taken place in the month of April and July, 2021 it cannot be said that the restraining orders which are sought are barred by law of limitation. In my opinion, the relief sought as regards suit property 1B cannot be utilized for the purpose of terminating the action at the threshold particularly when the plaintiff discloses cause of action.

10. In that view, the impugned order does not suffer from any infirmity. Further the averments in the plaintiff discloses the cause of action

which are the incidents which have been taken place in the month of April and July, 2021.

11. The Revision Application being devoid of merits stands dismissed.

[Sharmila U. Deshmukh, J.]