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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.543 OF 2016

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Ajay Bipinchandra Jhaveri

... Applicant

V/s.

Salim Saddrudin Khoja,
Through His PoA Holder
Sheetal Tejwani & Ors.

... Respondents

Mr. V. P. Sawant, Senior Advocate i/by Mr. Sarthak
Diwan for the applicant.

Mr. T. D. Deshmukh with Mr. Anshuman Deshmukh
with Mr. H. D. Chavan for respondent No.1.

Mr. Shivram A. Gawade /by Mr. Deepak R. More for
respondent Nos. 2 and 3.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 12, 2023

PC.:

1. Challenge in this revision application is to the order dated 29th June 2016 passed by the Trial Court rejecting the application filed by the applicant for rejection of plaint under Order 7 Rule 11 of the Civil Procedure Code, 1908.

2. The respondent No.1 is original plaintiff who filed Special Civil Suit No.1323 of 2014 seeking a declaration that permission granted by the Municipal Corporation in favour of defendant No.3 be declared as null and void and not binding on the plaintiff.

Consequential injunction from carrying out construction against defendant No.3 is prayed and further injunction restraining defendant Nos.1 and 2 from issuing completion certificate is also prayed.

3. The respondent No.1's plaint is based on agreement to sell dated 21st May 2004 executed by original owner in favour of the plaintiff. The respondent No.1 accepted in the written statement that certificate under section 32(M) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereafter, "the Act, 1948", for short), had been issued in favour of the tenant. He also accepts that civil suit bearing Special Civil Suit No.1235 of 2007 is filed for enforcement of agreement to sell dated 21st May 2004. According to the plaintiff, on 5th January 2012, he saw development activity on the suit property and, therefore, filed Special Civil Suit No.1323 of 2014.

4. The applicant (original defendant), therefore, filed an application under Order 7 Rule 11 of the Civil Procedure Code, 1908, contending that suit is barred by limitation and is barred by section 149 of the Maharashtra Land Revenue Code, 1966.

5. The Trial Court rejected the application by impugned order dated 29th June 2016, holding that period spent in earlier suit bearing Regular Civil Suit No.35 of 2012 needs to be excluded and, therefore, suit is within limitation and further held that when the authority acted in violation of law, Civil Court's jurisdiction is not barred.

6. Learned senior advocate for the applicant invited my

attention to the averments in the plaint and the documents annexed along with the plaint. According to him, on 22nd March 2001, i.e. the date when the certificate under section 32(M) of the Act, 1948, was issued in favour of the tenant, rights of the landlord over suit property extinguished. He submitted that on 28th February 2003, appeal filed by the landlord challenging issuance of certificate under section 32(M) of the Act, 1948, was dismissed. On 21st May 2004, legal representatives of the landlord has executed agreement to sell in favour of the plaintiff on which date legal representatives of the landlord had no right, title and interest in the suit property. With the result, they could not have transferred better title than themselves. Based on such document, the plaintiff cannot claim any right over the suit property.

7. Learned advocate for the plaintiff submitted that there is difference between no cause of action and failure to disclose cause of action. In the facts of the case at the most, the plaint can be termed as a suit failing to disclose cause of action but certainly it could not be termed as a plaint with no cause of action. In support of his submission, he placed reliance on the judgment of the Division Bench of this Court in the case of **M.V. “Sea Success I” vs. Liverpool and London Steamship Protection and Indemnity Association Ltd.** reported in 2002 Bombay 151.

8. I have heard counsels for the parties. On consideration of documents on record, following factual scenario emerges:

- (i) On 22nd March 2001, under section 32(M) of the Act, 1948, certificate issued in favour of the legal representatives

of the tenant;

(ii) On 28th February 2003, appeals filed by the representatives of the landlord were dismissed by the appellate authority under the Act, 1948;

(iii) On 21st May 2004, representatives of the landlord executed agreement to sell of suit property in favour of the plaintiff;

(iv) On 2nd March 2010, legal representatives of the tenant executed sale deed of suit property in favour of defendant No.3.

(v) On 22nd September 2014, the plaintiff filed present Special Civil Suit. No.1323 of 2014;

(vi) The Trial Court by order dated 29th June 2016 rejected the application under order 7 Rule 11 of the Civil Procedure Code, 1908.

9. On overall consideration of the factual scenario which emerges based on the plaint and the documents furnished along with the plaint, it appears that on the date of execution of agreement to sell in favour of the plaintiffs i.e. on 21st May 2004, the legal representatives of the landlord had no right, title and interest over the suit property in view of extinguishment of their rights by issuance of certificate under section 32(M) of the Act, 1948. Section 32(M) of the Act, 1948, confers status of conclusive proof of contents thereof to certificate under said section. Such certificate amounts to extinguishment of right, title and interest of

the landlord over the suit property. Therefore, legal representatives of the landlord on 21st May 2004, could not have executed agreement to sell in favour of the plaintiff. Resultantly, the plaintiff cannot claim enforceable right based on such agreement to sell against legal representatives of tenant and subsequent purchasers.

10. Undisputedly, the suit is based on agreement to sell dated 21st May 2004 which is unenforceable against legal representatives of tenants and subsequent purchasers. Therefore, the relief prayed by the plaintiff in the suit is not available to the plaintiff. Therefore, the Trial Court ought to have allowed the application under Order 7 Rule 11(d) of the Civil Procedure Code, 1908. Hence, following order:

a) The impugned judgment and order passed by the Trial Court dated 29th June 2016 by 4th Joint Civil Judge, Senior Division, Pune in Special Civil Suit No.1323 of 2014 below Exhibit-21, is set aside;

b) The application below Exhibit-21 in Special Civil Suit No.1323 of 2014 is allowed;

c) The Special Civil Suit No.1323 of 2014 stands dismissed.

11. The civil revision application stands disposed of. No costs.

(AMIT BORKAR, J.)