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

CIVIL REVISION APPLICATION NO.869 OF 2012

Ajay Bipinchandra Jhaveri & Ors. ... Applicants

V/s.

Salim Saddrudin Khoja,
Through His PoA Holder

Sheetal Kishanchand Tejwani & Ors. ... Respondents

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**WITH
INTERIM APPLICATION NO.356 OF 2021
IN
CIVIL REVISION APPLICATION NO.869 OF 2012**

Ajay Bipinchandra Jhaveri & Ors. ... Applicants

V/s.

Salim Saddrudin Khoja,
Through His PoA Holder

Sheetal Kishanchand Tejwani & Ors. ... Respondents

**WITH
CIVIL APPLICATION NO.137 OF 2014
IN
CIVIL REVISION APPLICATION NO.869 OF 2012**

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

V/s.

Ajay Bipinchandra Jhaveri & Ors. ... Respondents

Mr. V. P. Sawant, Senior Advocate with Mr. Prabhakar
Jadhav for the applicants.

Mr. T. D. Deshmukh with Mr. Anshuman Deshmukh
with Mr. H. D. Chavan i/by Mr. Sagar Kursija for
respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 12, 2023

P.C.:

1. Challenge in this revision application is to the order dated 23rd July 2012, passed by the Trial Court rejecting the applications filed by defendant Nos.23, 26 and 36 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.2223 of 2010 seeking a relief that sale deed dated 2nd March 2010 executed by defendant Nos.23 to 35 in favour of defendant No.36 be declared as not binding on the plaintiff and for cancellation of such sale deed. A consequential injunction against defendant No.36 not to create third party rights and not to construct over the suit property is also prayed for. The plaint is based on following material facts:

(i) Agreement to sell dated 21st May 2004 is executed by defendant Nos.2 to 12;

(ii) Filing of earlier suit for specific performance of agreement to sell dated 21st May 2004 wherein the Trial Court rejected the application under Order 7 Rule 11 of the Civil Procedure Code, 1908, filed by defendant No.6;

(iii) Certificate issued under section 32(M) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereafter, “the Act, 1948”, for short) on 22nd March 2001, is obtained by collusion;

(iv) The provisions of the Act, 1948, are not applicable to the suit property as the property is within the municipal limits;

(v) Execution of sale deed by defendant Nos.23 to 35 in favour of defendant No.36 despite knowledge of pendency of Special Civil Suit No.1235 of 2007;

(vi) Proceedings challenging certificate under section 32(M) of the Act, 1948, issued in favour of legal representatives of the original tenant pending before tenancy authorities.

3. In such a suit the applicants filed an application under Order 7 Rule 11(a) of the Civil Procedure Code, 1908, on the ground that the plaint discloses no cause of action. The Trial Court rejected the application holding that the defendants are also disputing legality and validity of the agreement to sell and grant of relief is depending on decision in Special Civil Suit No.1235 of 2007. The plaintiff being purchaser *pendente lite* right to seek such declaration cannot be denied.

4. Learned senior advocate for the applicants 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 landlords challenging issuance of certificate under section 32(M) of the Bombay Tenancy and

Agricultural Lands 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.

5. 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.

6. 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 Bombay Tenancy and Agricultural Lands 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 Bombay Tenancy and Agricultural Lands 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, defendant Nos.23 to 35 executed sale deed of suit property in favour of defendant No.36;
- (v) On 30th September 2010, the plaintiff filed present Special Civil Suit. No.2223 of 2010;
- (vi) The Trial Court by order dated 23rd July 2012 rejected the application under order 7 Rule 11 of the Civil Procedure Code, 1908.

7. 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.

8. 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 23rd July 2012 by 6th Additional Judge, Small Causes Court, Pune in Special Civil Suit No.2223 of 2010 below Exhibits-51, 74 and 81 is set aside;
 - b)** The applications below Exhibits-51, 74 and 81 in Special Civil Suit No.2223 of 2010 are allowed;
 - c)** The Special Civil Suit No.2223 of 2010 stands dismissed.
- 9.** The civil revision application stands disposed of. No costs.
- 10.** In view of disposal of the civil revision applications, all interim applications do not survive the same stand disposed of.

(AMIT BORKAR, J.)