

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.289 OF 2019

Lata Alias Latabai Shivaji Katke

...Applicant

Versus

Govind Laxman Katke & Anr.

...Respondent

*Adv. Chaitanya B. Nikte & Ms. Sneha Bhange & Adv. Prajit s. Sahane for
the Applicant.*

Adv. Sachin V. Khandagale for Respondent No. 1.

Coram : Sharmila U. Deshmukh, J.

Date : July 25, 2023.

P. C. :

1. The revisional jurisdiction has been invoked challenging the order dated 29th June, 2018 rejecting the Application filed under Order 7 Rule 11 of the Code of Civil Procedure. For the sake of convenience the parties are referred to the status before the Trial Court.

2. Special Civil Suit No. 432 of 2018 was instituted by the Plaintiff against the Defendants seeking declaration that the sale deed dated 30th March, 2017 executed in respect of the suit property 1B by Defendant No. 2 in favour of Defendant No. 1 is illegal, bad in law and that the same is not binding on the suit property 1A or the Plaintiff and for injunction. In

the alternative, the relief of pre-emption was claimed in respect of the suit property. In these proceedings, an Application came to be filed on behalf of Defendant No. 2 under Order 7 Rule 11 of the Code of Civil Procedure, 1908.

3. The application seeking rejection of plaint contends that as per the provision of the law, only class-I heirs have right to seek pre-emption and as the Plaintiff is the brother of late Shivaji and Defendant No. 2 is the wife of late Shivaji, the Plaintiff is not class-I heir and as such, no right to seek pre-emption accrues to the Plaintiff. It was also contended that the Plaintiff has sought relief of declaration to cancel the sale deed executed by Defendant No. 2 in favour of Defendant No. 1 and the Plaintiff has no locus standi to cancel the sale deed as the same is not prejudice to the share of the Plaintiff. Another ground on which the Application was moved is that there is no cause of action to file the said suit as the same is not maintainable being barred by provision of law.

4. The said Application came to be opposed by the Plaintiff vide its reply dated 21st June 2018. By the impugned order, the Trial court has rejected the Application in which the Trial Court has held that upon perusal of the averments in the plaint, it appears that after the demise of the common ancestor Narayan Bahirji Katake, the ancestral properties

were partitioned and $\frac{1}{4}$ share devolved upon Laxman Katake-father of Plaintiff and late Shivaji and that late Shivaji is survived by wife Aruna and daughter Rupali. The Trial Court observed that Defendant No. 2 is claiming to be wife of late Shivaji and she has executed sale deed in favour of Defendant No. 1. The Trial court held that challenge in the sale deed is by the Plaintiff on the ground that Defendant No. 2 has no right in the suit property and she is not authorized to execute the sale deed. The Trial Court held that at this stage the provisions of section 22 of the Hindu Succession Act will not come into play as relief of pre-emption is sought in alternative. As such, the Trial Court rejected the Application giving rise to the present Petitioner.

5. Heard learned counsel appearing for the Applicant and learned counsel appearing for the Respondent.

6. Learned counsel appearing for the Applicant has taken this Court through the averments made in the plaint and would contend that the case of the Plaintiff is that the property which was sold to the Defendant No. 1 is the property of Shivaji who was the brother of the Plaintiff. He would further contend that, it is evident from the averment in the plaint that it is accepted by the Plaintiff that the wife of Shivaji i.e. Aruna and his daughters have a right in the said property and would urge tthat as the

property is devolved upon Shivaji, the Plaintiff has not shown his right to sue in respect of the said property. He would further submit that the alternate relief of pre-emption demolishes the case of the Plaintiff in respect of his right in the suit property. He would further submit that in any event considering the provisions of section 22 of the Hindu Succession Act, the Plaintiff being the brother of Shivaji does not fall within the class-I heir and as such, no right could be claimed. He would further submit that the provisions of section 44 of the Transfer of Property Act is very clear and that there is no bar to sale of an undivided share and in such a case the subsequent transferee is required to seek partition. In support of his submission he relies upon the following decisions.

1] Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead, [(2020) 7 SCC 366]

2] Tej Bahadur Vs. Narendra Modi, [(2020) SCC Online SC 951]

3] Gautam Paul Vs. Debi Rani Paul & Ors.,[(2000) 8 SCC 330]

4] Ganeshappa Since dead by his LRs. & Ors. Vs. Krishnamma and Ors.,[2004 SCC Online Kar 305]

7. Drawing support of the said decisions, he would contend that the suit does not disclose the cause of action and as there was no right to sue and that the Plaintiff not having *locus standi*, the suit is liable to be rejected under Order 7 Rule 11.

8. *Per contra*, learned counsel appearing for the Respondent submits that perusal of the Application under Order 7 Rule 11 of the CPC would indicate that the objection was only as regards the right to seek pre-emption. He would submit that the substantial right claimed is relief of declaration that the sale deed executed by the Defendant No. 2 is not binding upon the suit property that is suit property 1A of which the suit property 1B forms a smaller portion. He would further submit that he has the locus to file the present proceedings, inasmuch as the suit properties have not been partitioned and being a Karta of the family, the status of the wife i.e. the Defendant No. 2 not being accepted the joint family property is required to be protected. In support of his submissions he relies upon the following decisions of the Apex Court.

1] Gurdev Singh Vs. Harvinder Singh [SLP (C) No. 19018 OF 2022 dt. 09-11-2022]

2] Sajjan Singh Vs. Jasvir Kaur & Ors. [2023 LiveLaw (SC) 517]

9. Considered the submissions and perused the papers with the assistance of learned counsel for the parties.

10. The averments in the plaint indicate the admitted position that the suit property 1B which has been sold by the Defendant No. 2 to the

Defendant No.1 is an undivided portion of the suit property being 1A. The genealogy which has come on record indicates that one Laxman Narayan Katake was the common ancestor and apart from two sisters, Govind and Shivaji were the two sons of Laxman Narayan Katake. It appears that the two sisters of Govind and Shivaji had relinquished their share in the suit property and as such, the suit property 1A devolved upon Govind and Shivaji. It appears that Shivaji had two wives i.e. Aruna and Lata and upon the demise of Shivaji, Lata has sold the suit property 1B which is the part of the suit property 1A in favour of Defendant No. 1. The averment in the plaint discloses that the property is an undivided property and the Plaintiff is the Karta of the joint family property and that the entire property 1A is in his possession and that the possession has never parted with. Armed with the case the relief sought is declaration that the sale deed executed by Defendant No. 2 in favour of Defendant No. 1 is not binding on the suit property 1A and on the Plaintiff and in the alternative the relief of pre-emption has been claimed.

11. If one peruses the Application under Order 7 Rule 11 of the CPC, the least that can be said is that the Application is bereft of any details. It needs to be understood that the application under Order 7 Rule 11 of CPC, if allowed, has the drastic effect of throwing out the suit at the

threshold and the least which can be expected is that a detailed Application is filed, so that the Trial Court while considering the said Application can be aware of the exact case which has been put forward by the Defendant seeking rejection of the plaint. The Application in paragraph No. 4 contends that the Plaintiff does not have a right to seek pre-emption being the brother of Shivaji. Further it is contended that the plaintiff has no locus to cancel the sale deed "being the said is not prejudice to the share of Plaintiff in the properties mentioned in paragraph No. 1 of the plaint." Paragraph No. 6 of the Application states that "there is no cause of action to file the said suit being the same is barred by provisions of law. Thus, the suit is not maintainable and required to be rejected." The contentions are incomprehensible. It was expected that a detailed application should be filed, so that the trial Court would have dealt with the submissions.

12. Perusal of the impugned order shows that the Trial Court has considered that the objection raised by the Plaintiff is as regards the right of the pre-emption only and as such, has held that at that stage the provisions of section 22 of the Hindu Succession Act will not come into play as relief of pre-emption is sought in the alternative. The decisions which have been relied upon by learned counsel for the Applicant were

not placed for consideration before the Trial Court and even the Application does not put forward the specific contention of the Defendants seeking rejection of the plaint. Considering the manner in which the Application has been filed, the impugned order in my opinion does not deserve any interference.

13. However, considering the dictate of the Apex Court in various decisions that in case the averments in the plaint are clearly vexatious or does not indicate any cause of action the litigation is required to be nipped in the bud, in order to give a parties an opportunity to file a detailed Application under the provisions of Order 7 Rule 11 of the CPC, I am inclined to quash and set aside the impugned order dated 29th June, 2018, with liberty to the Applicants to file a detailed application raising specific contention as to the provisions under which the Application is filed under Order 7 Rule 11 (a) to (d).

14. Upon such an Application will be filed, the Respondent is at liberty to file the reply and the Trial Court to consider the Application so filed on its own merits and in accordance with law. The Civil Revision Application is disposed of in above terms.

[Sharmila U. Deshmukh, J.]

This order is corrected as per speaking to the minutes of order dated 9th August, 2023.