

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL REVISION APPLICATION NO. 5 OF 2020

Damodhar Narayan Murkute __ Vs. __ Varsha Subhash Bhandarkar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.T.Harkare, Advocate for applicant
Mr. Abhijeet Khare, Advocate for non-applicant

CORAM : AVINASH G. GHAROTE, J.
DATE : 04/08/2023

1] Heard Mr. Harkare, learned counsel for the applicant.

2] The application challenges the order dated 7.12.2019, by which the application for rejection of plaint filed by the applicant on the ground of (i) absence of cause of action (ii) jurisdiction and (iii) non joinder of necessary parties, has been rejected.

3] Mr. Harkare, learned counsel for the applicant submits that the ingredients of all three grounds are demonstrated from the plaint and therefore the impugned order requires to be set aside. He also places reliance upon **Commissioner Akola Municipal Corporation vrs Bhalchandra Govind Mahashabde, 2013 (4) Mh.L.J. 45** and **Raghwendra Sharan Singh vrs. Ram Prasanna Singh (2020) 16 SCC 601**.

4] Mr. Khare, learned counsel for the non-applicant supports the impugned order.

5] In so far as the plea of non joinder of necessary party is concerned, the same is not a plea which can be said to be available under Order 7 Rule 11 of CPC. The contention is therefore rejected.

6] The plea regarding want of jurisdiction also does not hold any water for the reason that the suit is for removal of encroachment and possession filed by the non-applicant against the present applicant, which under Section 9 of CPC the Civil Court has jurisdiction to entertain and decide. The suit is between two private parties and therefore, any statutory bar contained in the Maharashtra Municipal Councils Act would not be attracted, as a result of which reliance upon **Bhalchandra** (supra) does not assist the applicant.

7] The suit being for removal of encroachment and possession, discloses a cause of action as the relief sought is for removal of encroachment and delivery of possession of the vacant land, in light of which it cannot be said that there is absence of cause of action. Reliance upon **Raghwendra** (supra) is clearly misplaced, as that contemplates position about bar of limitation, which is not a plea raised in the application under Order 7 Rule 11 of CPC and even otherwise, that is a plea which would require evidence. I therefore do not see any reason to interfere in the impugned order. The revision is dismissed. No costs.