



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

915 SECOND APPEAL NO.356 OF 2024

Mohd Yakub S/o Mohd Gaus And Ors.

VERSUS

Jindal Proprietors Of Builder And Developers Ltd Thr. Manoj
Jaybhagwan Jindal And Ors.

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Advocate for Appellants : Mr. V B Dhage
Advocate for Respondents 1-4 : Mr. M R. Sonawane

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : November 19, 2024

ORDER :-

1. Present appeal takes exception to the judgment and order passed by the District Judge, Jalna in RCA No.171 of 2019 dated 6.5.2023 so also the order dated 11.12.2019 passed by the Civil Judge Senior Division, Jalna below exhibit 26 in RCS No.460 of 2018 thereby rejecting the plaint in exercise of powers under Order 7 Rule 11 of the Civil Procedure Code.

2. The appellants are original plaintiffs. They had instituted a suit seeking decree of perpetual injunction against defendant nos.1 to 4 from carrying out construction over CTS No.14768 situated at Jalna, District Jalna. According to the plaintiffs they had share to the extent of 9.5 gunthas in the

aforesaid land. The defendant filed an application Exhibit-26 under order VII Rule 11-A of the CPC contending that plaint needs to be rejected for want of cause of action. According to defendant, very basis of the plaintiffs claim in present suit is decree passed in R.C.S.No.388 of 1989 which has been already set aside by the District Court in R.C.A. No.15 of 1997. The Trial Court, after hearing the parties accepted contention of the defendants and rejected the plaint for want of cause of action. The order of the trial court was assailed in RCA No.171 of 2019 before the District Judge, Jalna who concurred with Trial Court and dismissed the appeal.

3. Mr. Dhage, learned advocate appearing for the appellants submits that in RCS No.388 of 1989 right of the plaintiff's mother was upheld in respect of the suit property. Consequently, decree was passed. However, in appeal filed against said decree i.e. RCA No.15 of 1997 compromise has been entered into by the parties granting share to one of the defendant/J.D only. Such compromise would not foreclose right of the plaintiff since she was not given any share in that compromise.

4. Per contra, Mr. Sonwane, learned advocate appearing for the respondents submits that District Court had set aside the entire decree that has been relied by the plaintiffs. Whole basis of the plaintiffs claim do not survive. Consequently, both the Courts below have accepted the objection as regards to the cause of action and rejected the claim.

5. Having considered the submissions advanced, it can be gathered from the orders passed by the Courts below, it is apparent that R.C.S. no.388 of 1989 was decreed granting share in the suit property in favour of plaintiff's mother. The decree in R.C.S. no.388 of 1989 was assailed in the appeal. The appeal disposed as per compromise. Perusal of compromise recorded in RCA No.15 of 1997 shows that entire decree has been quashed and set aside. Consequently, claim of the plaintiffs based on such decree would not constitute valid cause of action to file the suit in favour of the plaintiffs. At this stage, Mr. Dhage would submit that only averments in the plaint would be relevant while dealing with the application under order VII Rule 11 of the C.P.C. Defense raised in the written statement would be irrelevant. Therefore, the Courts

below could not have ventured into the defence raised by the defendants.

6. It would be difficult to countenance with his submissions for the simple reason that it is the responsibility of plaintiffs to show that he has valid cause of action to institute the suit. If the defendants on the basis of impeccable documents demonstrate that cause of action as pleaded in the plaint would not be available, the Courts are bound to consider the same although cannot venture into defences raised in written statement. Trial Court as well as the Appellate Court rightly considered aforesaid aspects and found that plaintiffs could not make out valid cause of action, as decree in R.C.S. No.388 of 1989 is wiped out, consequently rejected the claim. No substantial question of law is made out in this Second Appeal. Hence, second appeal stands dismissed. No costs.

(S. G. CHAPALGAONKAR, J.)

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