

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 115 OF 2024

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| 1. | Raosaheb Bhanudas Warule | |
| 2. | Bhamabai Bhanudas Warule | Applicants
(original defendants) |

Versus

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| 1. | Rajendra Janardan Todkar | |
| 2. | Anil Radhakrishna Siddha | Respondents
(original plaintiffs) |

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Mr. Ajinkya Joshi, Advocate holding for holding for
Mr. S.V. Natu, Advocate for the applicants.

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 23 AUGUST 2022

Order :

- The applicants, who are the original defendants in Special Civil Suit No. 85/2023, have taken an exception to the order dated 09.05.2024 passed by the learned trial Court i.e. 2nd Joint Civil Judge (Senior Division), Ahmednagar (hereinafter referred to as the "learned trial Court") below Exh.22 in the said suit. Under the impugned order, the learned trial Court has rejected the application filed by applicants/defendants for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure.

2. It appears that the defendants have claimed rejection of plaint on the ground that one of the suit properties is now a commercial property, and therefore, the Commercial Court will have jurisdiction to try the said suit. The learned trial Court has observed in the impugned order that though there was construction of commercial type over the suit property No.1A of the plaint, but it is in the incomplete condition. It was also observed that there was no agreement between the parties that they were intending to use the said property for trade or commerce. As such, the learned trial Court held that the agreement of sale between the parties was not entered into for using it for trade or commerce.

3. It is extremely important to note that the suit of the respondents/plaintiffs is for specific performance of contract executed for two properties namely properties mentioned in Clause 1A and Clause 1B of the plaint. Even though the suit property No.1A is converted for non agricultural use, but the other property is still an agricultural land. Therefore, partial rejection of plaint is not advisable as per the observation in the case of *Geetha d/o Late Krishna and others vs Nanjundaswamy and others* reported in 2023

Supreme (SC) 1097. In view of the same, no perversity is found in the impugned order and hence the present Civil Revision Application stands dismissed.

(SANDIPKUMAR C. MORE, J.)