



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 133 OF 2023

Vandana W/o Anil Parse,
Age : 46 Years, Occ. Agriculture,
R/o. Post Ajintha, Tq. Sillod,
District Aurangabad.

.. APPLICANT
(Orig. Defendant No.3)

VERSUS

1. Sakhubai w/o Sadashiv Raut,
Age : 60 Years, Occ. Agriculture,
R/o. Post Balapur, Tq. Sillod,
District Aurangabad.

2. The State of Maharashtra,
Through District Collector,
Collector Office, Aurangabad.

3. Dy. Superintendent of Land Record,
Tq. Sillod, Dist Aurangabad.

.. Respondents

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Advocate for the Applicant : Ms. Pooja V. Langhe
A.G.P for Respondent Nos.2 and 3 : Mr. D.B.Bhange

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CORAM : SANDIPKUMAR C. MORE, J.

DATE : 16.07.2024

ORDER:-

1. Heard learned counsel for the applicant, who is the original defendant No.3 in Regular Civil Suit No. 195 of 2023, on admission. The applicant/defendant No.3 has challenged the order dated 03.07.2023 passed by the learned Joint Civil Judge, Senior Division, Aurangabad (hereinafter referred to as

the learned trial Court) in the aforesaid Regular Civil Suit No. 195 of 2023, below application at Exhibit 32. The present applicant had filed the aforesaid application (Exhibit No.32) for rejection of the plaint under Order VII Rule 11 (a) to (d) of the Code of Civil Procedure on the grounds, such as absence of cause of action, suit having no proper valuation or being under valued and barred by law. The learned trial Court has allowed application at Exhibit 32 partially and directed respondent No.1/plaintiff to correct the valuation and to pay the requisite Court fees. However, the present applicant being aggrieved by the order of learned trial Court of refusing to reject the plaint on the ground of absence of cause of action and suit being barred by law, has preferred this application.

2. The learned counsel for the applicant submits that the learned trial Court did not consider that respondent No.1/plaintiff is claiming injunction against statutory bodies restraining them for not to perform statutory duties. She also claimed that plaintiff/respondent No.1 is not having any locus to file such suit, since she has no personal interest in suit property mentioned in column No.1-B. She relied on the judgments on following :-

(I) **High Court of Delhi in the case of Sanjay Chugh**

Versus Ram Kishan (in Civil Misc. Application No. 50920 of 2019 decided on 30.3.2022)

(ii) **High Court of this Bench in the case of**

Goa Pollution Control Board Vs. Government of Goa and others (2023(3) Mh.L.J.)

3. On going through the impugned order it appears that respondent No.1/plaintiff has filed the aforesaid suit for correction of sale deed executed in favour of present applicant and direction to respondent Nos. 2 and 3 and also for injunction for not to carry out any measurement as per the earlier wrongly mentioned boundaries. It is significant to note that the applicant had claimed rejection of the plaint on the three grounds viz suit being under valuation, absence of cause of action and the suit is barred by law. So far as first ground of valuation is concerned, the learned trial Court has already directed the plaintiff to pay the short fall of requisite Court fees. However, so far as absence of cause of action and suit being barred by law are concerned, the learned counsel for the applicant is relying upon the judgment of this court in the case of **Goa Pollution Control Board Vs. Government of Goa and others** (2023(3) Mh.L.J.) wherein it is observed that no permanent or mandatory injunction could be granted by

Civil Court against statutory authority thereby restraining them from performing such duties as provided under the statute. It is further observed in the said judgment that plaint filed against defendant No.6 is clearly barred under law and no injunction could be granted against statutory authority thereby preventing them from exercising their statutory powers.

4. It is to be noted here that the learned trial Court has already discussed the aforesaid judgment and has observed that the relief of injunction claimed against the statutory body i.e. present defendant Nos. 2 and 3 in the present matter is in the light of main prayer of correction of boundaries of suit property 1-B, which is now owned by the present applicant. Therefore, this is not the suit purely against the Government body and the learned trial Court has also relied upon the observations of Hon'ble Apex Court whereby it is observed that plaint cannot be rejected in piecemeal. The learned trial Court has also observed that the facts of case in Goa Pollution (supra) are different and therefore the said observations is not applicable in the instant case. Apparently, no perversity can be seen in the observation of learned trial Court, specially when the Honb'ble Apex Court has settled that plaint cannot

be rejected against certain defendants and continued against remaining.

5. So far as the another ground i.e. absence of cause of action is concerned, the learned counsel for the applicant heavily relied upon the judgment of Delhi High Court in the case of **Sanjay Chugh Vs. Ram Kisan** (LAWS(DLH)-2022-3-200). On going through the aforesaid judgment, Delhi High Court was considering the issue whether Section 41 (j) of Specific Relief Act 1963, can permit this Court to grant injunction to the plaintiff having no personal interest in the matter and if the plaintiff is having no such personal interest, can suit be rejected under Order VII Rule 11(a) of the Code of Civil Procedure i.e. absence of cause of action ?

6. The learned counsel for the applicant submits that here the plaintiff/respondent No.1 herself had pleaded in her plaint that the suit property mentioned in paragraph No.1-B of the plaint belongs to brother of her husband, which is now purchased by the defendant No.3-applicant. Thus, she claimed that the applicant having no concerned with the suit property, is not entitled for claiming any relief and therefore, due to absence of any cause of action, her plaint is liable to be

rejected as per observations of Delhi High Court. However, on careful reading of the aforesaid judgment, it is clearly evident that the learned Civil Judge, vide order dated 20.07.2018 observed as follows :-

“4. From the pleading made in paragraph No.4 of the plaint and from the observations made by Dr. Saurabh Kulshrestha, the then Ld. Commercial Civil Judge, East District, KKD Courts, Delhi in the aforesaid Order, I am convinced that the plaintiffs have no personal right, title or interest, in respect of the open land shown in the site plan filed along with the plaint.

5. In Section 41(j) of the Specific Relief Act, 1963, it is specifically provided that no injunction can be granted when the plaintiff has no personal interest in the matter.

6. Keeping in view the fact that the plaintiffs have no personal right, title or interest in respect of the open land shown in the site plan filed along with the plaint and keeping in view the fact that Section 41(j) of the Specific Relief Act, 1963 does not permit this Court to grant any injunction to a plaintiff having no personal interest in the matter, the plaint of this suit is rejected under Order VII Rule 11(a) of CPC, 1908”.

7. However, the learned Additional District Judge vide his order dated 26.09.2019, had in fact reversed the order of learned Judge and observed that even if plaintiffs were not

having right, on the property owned by defendant, but they definitely had right to have clean environment. The Delhi High Court has in fact observed that the learned Additional District Judge was correct in his opinion expressed by him that respondents cannot be said to have had no personal interest in the matter, so as to justify summary dismissal of the suit under Order VII Rule 11 (a) of the Code of Civil Procedure. With these observations the Delhi High Court has dismissed the Second Appeal.

8. Admittedly, in the instant matter, the respondent No.1/plaintiff is not owner of the suit property mentioned in clause 1-B. However, she has claimed that the boundary in the sale deed executed in favour of the present applicant is wrongly mentioned and that too toward the northern side only. It is significant to note that respondent No.1 plaintiff claiming that towards the north side of the suit property mentioned in column No.1-B, the remaining land of her husband is there, but it is not shown correctly in the sale deed executed in favour of the present applicant. Therefore, in the light of such claim and prayer thereof it is to be decided whether the said boundaries are wrongly mentioned and if it is mentioned wrongly, then how the right of the respondent

No.1/plaintiff will be affected. All these facts can be clarified after leading evidence only. Therefore, at this juncture, it cannot be said that the plaint is liable to be rejected merely on the ground that respondent No.1/plaintiff is not owner of the disputed property. Considering these facts, no interference is required in the impugned order and thus, the Civil Revision Application stands rejected.

(SANDIPKUMAR C. MORE, J.)

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