



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

CIVIL REVISION APPLICATION NO. 164 OF 2023

1. Anil Hiralal Patil,
Age : 40 Years, Occ. Agriculture,
R/o. Chinchpura Tq. Dharangaon,
Dist. Jalgaon.

... Applicant
(Orig. Defendant)

VERSUS

1. Rajesh S/o Vijay Patil,
Age : 53 Years, Occ. Business,
R/o. "Indranil Society" Near Khote
Nagar, Jalgaon.

(Orig. Plaintiff)

2. J.N. Kumbahar,
Age : Major, Occ. Agriculture

3. Shri. R.D. Bansode,
Age : Major, Occ. Agriculture

Both respondent Nos. 2 and 3
R/o. Ambedkar Nagar, Bhusawal,
Dist. Jalgaon.

..Respondents
(Orig. Defendant Nos.2 & 3)

...

Mr. B. R. Kedar Advocate for the Applicant

Respondent No.1 to 3 served through paper publication

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : August 28, 2024

JUDGMENT:-

1. The present applicant, who is the original defendant No.1 in Regular Civil Suit No. 12 of 2022 (old Regular Civil Suit No. 36 of 2021), has challenged the order dated 01.07.2023, whereby his application (Exh.38-A) for rejection of plaint, has

been rejected by the learned trial Court i.e. learned Civil Judge, Junior Division, Dharangaon, District Jalgaon. According to the applicant, respondent No.1/plaintiff has filed the aforesaid suit on the vexatious ground and as bogus litigation, to involve the suit property unnecessarily.

2. The learned counsel for the applicant heavily relied on the judgment of Hon'ble Apex Court in the case of ***T. Arivandandam Versus T.V. Satyapal 1977 AIR (SC) 2421*** wherein it is observed that the Court must exercise its powers to shoot down the bogus litigation at the earliest stage by exercising powers under Order VII Rule 11 of the Code of Civil Procedure. He pointed out that respondent No.1/original plaintiff in the aforesaid suit is not having any privity of contract with the applicant in respect of the suit land and in fact the present applicant had already filed suit against original defendant Nos. 2 and 3 bearing Regular Civil Suit No. 21 of 2020 for declaration that no agreement of sale was executed by him with them.

3. As against this, the respondents, despite service, remained absent.

4. Heard learned counsel for the applicant and also perused the impugned order along with the documents on record. The

record shows that the present respondent No.1, who is the original plaintiff, has filed this Regular Civil Suit No. 12 of 2022 for declaring that alleged agreement to sale dated 16.09.2018 was executed by the present applicant/defendant No.1 in favour of defendant Nos. 2 and 3 and that the agreement of sale dated 22.07.2020 allegedly executed by the present defendant No.2 and 3 in his favour in respect of the suit property are true and binding upon the present applicant. He also claimed permanent injunction against the applicant for not to transfer the suit during the pendency of the aforesaid suit.

5. However, it is also significant to note that prior to filing of Regular Civil Suit No. 12 of 2022, the applicant/defendant No.1 had already filed suit bearing Regular Civil Suit No. 21 of 2020 for declaration that no such agreement of sale dated 16.09.2018 was executed by him in favour of present defendant Nos. 2 and 3. In the said suit, the applicant had contended that one Advocate Vaibhav P. Joshi, with fraudulent intention to involve the suit property unnecessarily, had issued public notice contending that the present defendant Nos. 2 and 3 had entered into agreement of sale dated 16.09.2018 with the applicant. However, the applicant not only filed the said suit, but also lodged criminal complaint against the said

Advocate Vaibhav P Joshi and present defendant Nos. 2 and 3 by contending that no such agreement was executed by him. It is significant to note that the concerned police station registered FIR No. 129 of 2020 against the said Advocate Vaibhav P. Joshi as well as the present defendant Nos. 2 and 3. It has been revealed that no such agreement was brought on record by the said Advocate Vaibhav P. Joshi and therefore, the police machinery found that in absence of such agreement, the said Advocate had issued fabricated notice with intention to cheat the present applicant, who is the owner of the suit property. It is important to note that in the investigation of the said crime, the present defendant Nos. 2 and 3 could not be found even by the police. As such, the applicant claimed that they may be fictitious persons.

6. That apart, but the present respondent No.1 i.e. the original plaintiff has filed the suit which is now numbered as Regular Civil Suit No. 12 of 2022 for declaring the earlier agreement of sale between applicant and defendant Nos. 2 and 3 as well as agreement of sale dated 22.07.2020 executed by present defendant Nos. 2 and 3 in his favour in respect of the suit property which is admittedly owned by the present applicant as true documents. It is extremely important to note that there is no privity of contract between the present

respondent No.1/plaintiff as well as the applicant/ defendant No.1. Moreover, respondent No.1/plaintiff had also not produced those agreements of sale. Therefore, respondent No.1/plaintiff is not having any cause of action against the present applicant as there was no privity of contract between them. Further, it is only contention of respondent No.1/plaintiff that present defendant Nos. 2 and 3 on the basis of earlier agreement of sale had executed another agreement of sale in his favour. However, it is extremely important to note that defendant Nos. 2 and 3 are facing criminal prosecution in respect of the earlier agreement of sale allegedly executed by the present applicant in their favour on 16.09.2018. In absence of such agreement of sale on record, there is nothing to hold that the applicant had in fact executed such agreement of sale. Even otherwise also, there is no cause of action for respondent No.1/plaintiff against respondent Nos. 2 and 3 as he also did not produce any supportive document showing that defendant Nos. 2 and 3 had executed agreement of sale in respect of suit property in his favour on 22.07.2020. Thus, it is clearly evident that when the present applicant had not executed any document, such as, agreement to sale dated 16.09.2018 in favour of present defendant No.2 & 3, then defendant Nos. 2 and 3 were not entitled in any manner to

execute an agreement to sale dated 22.07.2020 in favour of respondent No.1/plaintiff. As such, the plaintiff has not established the clear right to sue against all the defendants, who are applicant as well as defendant Nos. 2 and 3.

7. The Hon'ble Apex court in the case of **T. Arivandandam Versus T.V. Satyapal** (supra) has clearly observed that to curb vexatious or meritless case in absence of any cause, the Court must exercise its power to shoot down such bogus litigation at the earliest stage. It is observed that if on a meaningful and not formal reading of the plaint, it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the Court should exercise its power under Order VII, Rule 11, of the Code of Civil Procedure taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly. It is also observed that an activist Judge is the answer to irresponsible law suits and the Penal Code is also resourceful enough to meet such men.

8. In the instant matter, there is no privity of contract between the applicant as well as original plaintiff i.e. respondent No.1. Further the criminal prosecution has already

launched at the instance of the present applicant against the present respondent Nos. 2 and 3 along with their Advocate Vaibhav P. Joshi in respect of publishing notice contending that the applicant had executed agreement of sale of suit property in their favour. As such, on meaningful reading of the plaint, it appears that respondent No.1/plaintiff with clever drafting has tried to give rise vexatious and meritless case only to involve the suit property in the litigation. Thus, in view of the observations of the Hon'ble Apex Court as mentioned above, the learned trial Court should have exercised power under Order VII Rule 11 of the Code of Civil Procedure to curb such vexatious proceeding. However, by not doing so, the learned trial Court has definitely erred to fulfill its duty as an activist Judge. As such, considering all these facts, the impugned order dated 01.07.2023 below (Exh. 38-A) in Regular Civil Suit No. 12 of 2022 is quashed and set aside and the plaint in the said Regular Civil Suit No. 12 of 2022 stands rejected. The Civil Revision Application is disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)

Y.S. Kulkarni