



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 195 OF 2023

Kundlik Laxman Kale

Applicant

Versus

Narayan Purushottam Dave
Since deceased through LRs

Respondents

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Mr. Ameet R. Vaidya, Advocate for the applicant.

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CORAM : SANDIPKUMAR C. MORE, J.

Dated : 16 February 2024

Order :

1. Heard learned Counsel for the applicant at admission stage.

2. The applicant, who is the original defendant No.9 in R.C.S. No. 1528/2022, has challenged the order below Exh.37 passed by 5th Joint Civil Judge (Senior Division), Aurangabad (hereinafter referred to as “the learned trial Court”), whereby the application of present applicant under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure (for short, “C.P.C.”), has been rejected.

3. Learned Counsel for the applicant vehemently argued that the plaintiff i.e. respondent No.1 in the aforesaid suit has not established any right of herself for claiming

reliefs in the plaint. Even no cause of action is mentioned by her and she cannot challenge the revenue proceedings whereby some of the defendants are declared tenants. He pointed out that the tenancy proceedings are travelled upto this Court, and therefore, those proceedings cannot be set aside by claiming declaration in the civil suit. He also pointed out that the tenancy issue challenged by the plaintiff cannot be decided by the Civil Court in view of bar as per Section 11 of Bombay Revenew Jurisdiction Act read with Section 5 of C.P.C. He also pointed out that as per Section 41 (h) of the Specific Reliefs Act, when the alternative efficacious remedy is available to the plaintiff, then the simple suit for injunction is not maintainable.

4. Admittedly, the learned trial Court has rejected the application of rejection of plaint filed by the present applicant. On going through the impugned order, it appears that the learned trial Court has opined that though certain reliefs claimed in the suit in respect of tenancy proceedings cannot be decided by Civil Court, but relief of injunction can be decided by the Civil Court, and therefore, the learned trial Court rejected the application. On going through the documents on record, it appears that so many revenue

proceedings were instituted in respect of tenancy of some of the defendants, but it is equally important to note that the plaintiff has not only claimed the relief of declaring those proceedings illegal, but also claimed injunction. It is settled position that for rejection of plaint, only plaint is to be referred. On perusal of the plaint, it appears that plaintiff i.e. respondent No.1 has given cause of action in clause-20 of the plaint. Moreover, it is also settled that if some of the reliefs claimed in the plaint are out of purview of the Civil Court, but if some of the reliefs can be granted by the Civil court, such as injunction, the partial rejection of plaint is not permissible. In view of the same, the suit can be continued at least for the relief of injunction. As such, the learned trial Court, by observing all these aspects, has rightly rejected the application of the applicant under Order VII Rule 11 (a) and (d) of C.P.C. In view of the same, the Civil Revision Application stands dismissed.

(SANDIPKUMAR C. MORE, J.)