



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 22 OF 2024

1. Imran Baig Gaffar Baig,
Age : 36 years, Occ. : Business,
R/o. : Near Jama Masjid,
Bus Stand Road (Sagar Paan Center),
Daultabad, Tq. and Dist. Aurangabad

... PETITIONER
(Ori. Defendant)

VERSUS

1. Mukhtar Muneer Baig,
Age : 47 years, Occ. : Business,
R/o. : Kadri Nagar, Vaijapur,
Tq. Vaijapur, Dist. Aurangabad
2. Rabiyabi Bashir Shah,
Age : 78 years, Occ. : Household,
R/o. : Maharana Pratap Road,
Dargah Base, Vaijapur, Tq. Vaijapur,
Dist. Aurangabad
3. Hasinabano Shafiq Shah,
Age : 58 years, Occ. : Household,
R/o. : Lane No.C-11, Sanjaynagar,
Baijipura, Aurangabad
4. Azizabano Sayyad Liyaqat Ali,
Age : 57 years, Occ. : Household,
R/o. : Lane No.C-11, Sanjaynagar,
Baijipura, Aurangabad
5. Naseembano Sadek Shaikh,
Age : 54 years, Occ. : Household,
R/o. : House No.3-5-122, Paithan Road,
Tilak Path, Near Khairati Masjid, Aurangabad

6. Shamimbano Sayyad Mubarak,
Age : 53 years, Occ. : Household,
R/o. : House No.4-13-57, Lane No.11-A,
Near Aslaam Masjid, Aurangabad

... **RESPONDENTS**

(Ori. Plaintiffs)

...

Mr. N.S. Muthiyan – Advocate for Petitioner

....

CORAM : SANDIPKUMAR C. MORE, J.

DATE : 1st February, 2024

PER COURT :

1. Heard learned Counsel for petitioner at the stage of admission and also perused the documents on record.
2. The petitioner who is original defendant in Regular Civil Suit No. 1669 of 2022 has challenged the order dated 28.11.2023 below Exhibit – 16 passed by the learned 5th Joint Junior Division, Aurangabad i.e. learned Trial Court, whereby the application of the present petitioner for Rejection of the Plaint under Order VII Rule 11 of Civil Procedure Code (“C.P.C.” for short) has been rejected.
3. Learned Counsel for petitioner vehemently argued that, the present respondents who are original plaintiffs, filed the suit for perpetual injunction without claiming any substantial relief of partition in respect of the suit property mentioned in the plaint and that too being out of possession. According to him, aforesaid

suit of the respondents / plaintiffs is barred by law specially under Section 41(h) of the Specific Relief Act, 1963. Thus, he claim that, the learned Trial Court despite such bar wrongly rejected the application for petition for Rejecting the Plaint.

4. Admittedly, from the pleading of respondents in the plaint it appears that, they have stated that the suit property is in possession of present petitioner. Learned Counsel for petitioner relied upon the judgment of Hon'ble Apex Court in the case of ***Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs and Ors.***, in Appeal (civil) No. 6191 of 2001 reported in **AIR 2008 SC 2033**, wherein the Hon'ble Apex Court in paragraph 17 has made following observation :

“(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.”

There cannot be any dispute as regards the aforesaid

observation of Hon'ble Apex Court but the pleadings of the plaint filed by the present respondents before the learned Trial Court has to be read in whole and not in isolation. Though the respondents has stated in the plaint that petitioner / respondent is residing in the suit property but they have also claim that, he has obtain such possession illegally. Further, it appears that the present respondents / plaintiffs are claiming right over the suit property through their father and also issued notice through their Advocate on 30.11.2022 for causing partition in the suit premises. Thus, the cause of action has been given in the plaint by the respondents.

5. So far as Section 41(h) of the Specific Relief Act, 1963 is concerned it is only in respect of the circumstances in which the injunction can be refused. There is no express bar for filing such suit for injunction simpliciter wherein the plaintiffs are entitled for certain additional relief. Further, the Hon'ble Apex Court in the case of **Anathula Sudhakar** (*cited supra*) has only summarized the position in regard to suits for prohibitory injunction and has observed as aforesaid. However, the said observation cannot be read in isolation, which is on the maintainability of the suit. Therefore, the application of petitioner before the learned Trial

Court appears to be out of purview of Order VII Rule 11 of C.P.C. As such, the impugned order of the learned Trial Court cannot be said to be perverse. In view of the same present Civil Revision Application stands dismissed and accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE