

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5548 OF 2023

M/s. Kanale Enterprises
Partnership Firm through its Partners,
Kanchan K. Kanale & Ors. ... Petitioners

V/s.

Motilal Chandramappa Bandagi & Ors. ... Respondents

Mr. Ajit V. Alange for petitioners.

Mr. Dnyaneshwar Jadhav a/w Ms. Rama Somani a/w Ms. Jeel
Shah i/by Ms. Rama Somani for respondents.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 27, 2024

PC.:

1. The petitioners, who are the original defendants, challenge the order passed by the Trial Court, which rejected their application under Order 7 Rule 11 of the Civil Procedure Code, 1908 (CPC).
2. The petitioners contend that the suit for an injunction, filed by the respondent-plaintiffs based on the 7/12 extract, lacked any cause of action, as the basis for such a suit, i.e., the 7/12 extract, had been canceled by the Appellate Authority under Maharashtra Land Revenue Code 1966.
3. In a suit for injunction, it is necessary for the plaintiffs to aver that they are in lawful possession of the suit property. In the

absence of such averments, which would indicate an enforceable right, the Court may dismiss the plaintiffs' suit for want of cause of action.

4. Upon perusal of the plaint, it appears that there is a dispute between the parties regarding the possession of the suit property. While the existence or non-existence of revenue records, such as the 7/12 extract, may not impact the substantive rights of the parties, it is well-settled that revenue records neither confer nor destroy substantive rights over immovable property. Therefore, the averments in the plaint asserting that the plaintiffs are in possession of the suit property are sufficient to sustain the suit. Whether the plaintiffs can prove their case at the interim stage or on the merits can be determined by the Trial Court at the appropriate time when considering the grant of either interim or final relief. However, once the necessary averments constituting the relief sought by the respondents are present, the Trial Court was within its rights to reject the application under Order 7 Rule 11 of the CPC.

5. The learned advocate for the petitioners further contended that there was a cloud on the plaintiffs' title before the filing of the suit. Relying on the judgment in *Anathula Sudhakar v. P. Buchi Reddy (dead) by Lrs.*, (2008) 4 SCC 594, it was argued that such a suit is not maintainable. However, in the facts of this case, such a contention cannot be accepted, as there is no legal bar prohibiting the relief claimed by the respondents. Hence, the petition lacks merit. The writ petition is accordingly dismissed.

6. No order as to costs.

(AMIT BORKAR, J.)