

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.53 OF 2024

Mohan Genbhau Yele

.. Applicant

Versus

Dadabhau Shivram Chavhan and Ors.

.. Respondents

-
- Mr. Kuldeep U. Nikam, Advocate for Applicant.
-

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 14, 2024

P.C.:

- 1.** Heard Mr. Nikam, learned Advocate for Applicant.
- 2.** Civil Revision Application takes exception to the twin orders dated 29.11.2023 and 12.12.2023 passed in Applications filed below Exhibit-41 and Exhibit-44 under Order VII Rule 11 of Civil Procedure Code, 1908 (for short '**CPC**') in Regular Civil Suit No.280 of 2023 respectively raising three specific grounds for rejection of plaint on the ground of maintainability seeking cancellation of registration of sale deed dated 23.02.2023 in favour of Applicant.
- 3.** Other two grounds for rejection are improper valuation with respect to prayer for preemption.
- 4.** At the outset, Mr. Nikam would concede that suit was filed in the year 2023 by the Plaintiff. He would submit that the issue of preemption stands settled by the Supreme Court and in so far

valuation of inadequate Court fees is concerned, the same cannot now be agitated considering the reliefs prayed for in the prayers.

5. Payment of Court fees is undoubtedly with respect to reliefs prayed for in suit plaint and adequately dealt with and there is no grievance of Applicant. Despite the order dated 29.11.2023, Applicant who is Defendant No.8 in the suit proceedings filed a further Application below Exhibit-44 on the same ground and cause of action under Order VII Rule 11(d) of the CPC. This Application on the face of the Application ought to have been rejected by the learned Trial Court in the first instance but the Trial Court entertained the same. The reason is obvious. Successive Application is filed on separate cause of action and this time it is alleged that as per Plaintiff's own case on the basis of Mutation Entry, the suit property has been sold by the Plaintiff and for this reliance is placed on Mutation Entry No.1363 by the Applicant. This ground was available earlier also. Further property cannot be alleged to be sold on the basis of the Mutation Entry.

6. Suit as it is seen is for simplicitor injunction and the ancillary relief is for preemption. Question is as to whether Plaintiff has preferential right and whether Plaintiff would be able to prove his title so as to persuade the Trial Court to injunct the Defendants. These questions / issues would be subject matter of trial based upon evidence of the right, title and interest of the Plaintiff in the suit

property. Dispute between the parties namely family members of the Plaintiff and his co-owner Defendants is with respect to the suit land. Defendant No.8 is an outsider third party purchaser of the right of one of the Defendants' branch. Defendant No.8 relies upon his sale deed with one of the Defendant's branch who is the co-owner of the property. If Plaintiff proves his case of preemption, the co-owner Defendant's transaction with the Defendant No.8 shall be void. Hence every attempt is made by Defendant No.8 to dismiss the suit proceedings.

7. Considering that the suit is not for declaration but only for injunction, onus would be on the Plaintiff to prove his right, interest and entitlement in order to succeed. He cannot be precluded at the threshold by a third party Defendant No.8 by filing successive Applications under Order VII Rule 11 (d) of the CPC. It is clearly seen that the suit property is ancestral property and therefore Plaintiff deserves to proceed and agitate his substantive right therein for seeking preemption as against his co-owner Defendants.

8. Trial is inevitable.

9. Successive Applications filed are strictly not maintainable and have been correctly dealt with by the learned Trial Court and the orders passed rejecting the Applications are correctly passed and do not call for any interference. Both orders are sustained.

10. Both orders dated 29.11.2023 and 12.12.2023 are therefore upheld and confirmed.

11. Civil Revision Application is comprehensively dismissed.

12. Substantial judicial time has been wasted by the Applicant in arguing the Revision. Above order is therefore undoubtedly not unconditional. Applicant is directed to pay costs of Rs.10,000/- to the Kirtikar Law Library, High Court, Mumbai within a period of two weeks from today positively. Receipt of payment of costs shall be placed before the Court on 28.02.2024 at 02.30 p.m.

13. With the above directions, Civil Revision Application is disposed.

14. List the Civil Revision Application for compliance of this order on **28th February, 2024** at 02.30 p.m.

H. H. SAWANT

[MILIND N. JADHAV, J.]

HARSHADA
HANUMANT
SAWANT

Digitally signed by
HARSHADA
HANUMANT
SAWANT
Date: 2024.02.14
18:07:30 +0530