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

CIVIL REVISION APPLICATION NO. 373 OF 2024

Bahubali Kalappa Jain and Ors.

.. Applicants

Versus

Bhanudas Balu Karande and Ors.

.. Respondents

-
- Mr. Shailesh Chavan i/by Mr. Milind Deshmukh, Advocate for Applicants.

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CORAM : MILIND N. JADHAV, J.

DATE : JULY 15, 2024.

P.C.:

- 1.** Heard Mr. Chavan, learned Advocate for Applicants.
- 2.** Defendants have filed Application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short “**CPC**”) seeking rejection of the Suit plaint. *Prima facie*, it is seen that the Suit plaint filed by the Plaintiffs is on the basis that if the Tenancy Court comes to the conclusion that the Plaintiffs are not the owner of the Suit property, then the Civil Court should declare the Plaintiffs to be the owner of the Suit property by adverse possession. While considering such a relief qua the averments made in the Suit plaint, the learned Trial Court in paragraph No.15 has returned a finding that on bare reading of the Suit plaint, Plaintiffs have stated that they were the owner of the Suit property and claiming to be the deemed purchasers of the Suit

property as per the provisions of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short “**MTAL Act**”) and therefore they seek perpetual injunction. This finding itself as returned in paragraph No.15 is contrary to the cause of action and the principal relief sought for by the Plaintiffs in the Suit plaint.

3. There are two specific legal issues which are required to be considered in the present case. Firstly, under the provisions of Sections 50, 51 read with Section 80 of the Maharashtra Public Trusts Act, 1950, such a Suit in respect of the Suit property is clearly not maintainable in the Civil Court. This aspect has been completely ignored by the learned Trial Court. Secondly, if it is the Plaintiffs’ case that they have to be declared as owner of the Suit property under the MTAL Act, then such a remedy cannot lie in a Civil Court. In view of the aforesaid two specific legal issues affecting the Plaintiffs’ right in the Suit property, there is a complete embargo on the Plaintiffs in approaching the Trial Court by way of a Civil Court.

4. The impugned order clearly ignores the aforesaid two restraints. The impugned order is *prima facie* not sustainable at all.

5. An arguable case has been made out by Mr. Chavan for issuance of notice and immediate stay of the impugned order dated 08.04.2024.

- 6.** Hence, issue notice to the Respondents. Humdast permitted.
- 7.** In addition to Court notice, Applicants are permitted to serve a copy of the Civil Revision Application and this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate Affidavit of service with tangible proof thereof on or before the next date.
- 8.** After receiving notice, Respondents are directed to take cognizance of this order and file their Affidavit-in-Reply on or before the next date, if so desired.
- 9.** It is clarified that, this Civil Revision Application shall be disposed of on the next adjourned date at the stage of admission itself after hearing the parties.
- 10.** Respondents are directed to remain present in Court on the next adjourned date either by themselves or through Advocate.
- 11.** In the meanwhile, the proceedings before the learned Trial Court shall stand stayed until the present Civil Revision Application is determined by this Court.
- 12.** Stand over to **29th July 2024.**

[MILIND N. JADHAV, J.]

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