

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 11614 OF 2024

Dadaso Ramu Pandhare & Anr.

.. Petitioners

Versus

Imam Ismail Mujawar & Ors.

.. Respondents

.....

- Mr. Padmanabh D. Pise a/w Ms. Sejal A. Hariyan i/by P. Padmanabh & Associates for Petitioners

.....

CORAM : MILIND N. JADHAV, J.

DATE : JULY 01, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 01.07.2024.
3. Heard Mr. Pise, learned Advocate for Petitioners.
4. At the outset, Mr. Pise would submit that the challenge is maintained to the rejection of an Application filed under O. VII, R. 11 of the CPC. He would submit that inadvertently against the impugned order, present Writ Petition has been filed. He seeks leave to convert the present Writ Petition into Civil Revision Applciation. In view thereof, he is permitted to carry out necessary amendment within a period of one week from today in the present Writ Petition and covert it into the CRA. Registry is thereafter directed to register the CRA afresh. Re-verification stands dispensed with. If any Court fees are

payable the same shall be paid by Petitioners / Applicants in accordance with law and the Registry shall accept the same.

5. In view of the above, the present order passed in the present Writ Petition shall be treated as passed in Civil Revision Application as the CRA is taken up for hearing forthwith.

6. Impugned order dated 19.03.2024 is passed by the learned Trial Court disposing of Application filed by Defendant No. 2 (Petitioner No. 2 herein) under O. VII, R. 11 of the CPC by Suit is filed simplicitor for injunction on the basis of title deed executed in the late eighties between the predecessors in title of the parties.

7. Mr. Pise would submit that the Suit has been filed on the premise that Plaintiffs are in possession of the suit property but according to his instructions, Defendants are having physical possession of the subject property. He would submit that learned Trial Court in the impugned order has given a *prima facie* finding that the said Application is not maintainable in view of the reasons expressed in paragraph 9 of the said order which is reproduced below:-

“09. Thus, on going through entire plaint, it appears that the plaintiffs are seeking protection to their possession over the suit land. For the said reason, the suit is maintainable and it is not barred by the provisions of any law. Considering relief claimed by the Plaintiffs, present suit is quite maintainable before this Court. Therefore, it is hold that the plaint is not liable to be rejected in view of provisions under Order VII Rule 11(d) of the Code of Civil Procedure. Cumulative effect of above discussion is that present application is devoid of merit. Hence, following order:-

ORDER

1. *The application is rejected.*

2. *No order as to costs.”*

8. *Prima facie* after going through the aforesaid order, if it is the Defendants’ contention that they are in physical possession of the suit property, there is no need for the Defendants to be anxious. However, Mr. Pise would submit that the *prima facie* finding which has been passed in the impugned order should not be held against the Defendants. That can never be the case. The Suit will have to be determined on the basis of the evidence led by the Plaintiffs and the evidence in rebuttal led by the Defendants. Any *prima facie* observations in the impugned order cannot come in the way of the parties. This is particularly so because Suits are decided on the basis of the evidence and not *prima facie* observations in interlocutory orders.

9. Keeping all contentions of both the parties i.e. Plaintiffs and Defendants open, the impugned order is sustained without opining any opinion on merits of the matter and the learned Trial Court is also directed that it shall not be influenced by any of the observations passed in the impugned order or this order while deciding the overall suit proceedings, which will be determined strictly in accordance with law.

10. With the above directions, Writ Petition / CRA is disposed.

[MILIND N. JADHAV, J.]

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AMBERKAR
Date:
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