

relationship of landlord and tenant and as such there is no cause of action and the plaint deserves to be rejected.

2.2. No rent receipt is annexed alongwith the plaint in the name of any of the Plaintiffs or in the name of their establishment i.e. Prem Plywood. There is no agreement of tenancy between the Plaintiffs and Defendant No.1 and hence Plaintiffs have no *locus standi* to file the present Suit.

2.3. Suit premises is not in existence and hence the present Suit is not maintainable and liable to be rejected.

2.4. Plaintiffs have not paid proper Court fee in accordance with the relief claimed in Suit and the Suit is not valued correctly and Suit is filed by paying a nominal Court fee.

2.5. Mandatory notice under Section 89 of the Waqf Act, 1995 (for short “**the said Act**”) has not been issued to Defendant No.3 – Tribunal.

2.6. Suit is barred under Order II Rule 2 of CPC.

2.7. The plaint does not disclose any cause of action. There is vast ambiguity and variance in each paragraph of the plaint and there is no disclosure of cause of action against Defendant No.1.

3. The aforesaid grounds have been taken into cognizance by the learned Tribunal. Suit plaint is at Exhibit “A” – page No.15 of the

CRA. I have perused the same. It is seen that it is filed by 4 Plaintiffs, who are admittedly legal heirs of their predecessor-in-title who was/is the tenant of Defendant No.1. This fact is fortified and even an admitted position on the averments made in the plaint and by virtue of the evidence appended to the plaint which is seen from page No.37 onwards. The document appended at page No. 37 is the rent receipt (भाडे पावती) issued by Defendant No.1 on its own letterhead / receipt book bearing a distinct receipt number and due date to the predecessor-in-title of Plaintiffs.

4. Though, it is argued by Mr. Savant that the rent receipts which are averred to and produced are prior to the demise of the predecessor-in-title of Plaintiffs (predecessor having expired on 16.07.2004) however, it is *prima facie* seen that some of the rent receipts pertain to a much subsequent period and therefore it is clear that the existential right of Plaintiffs in the Suit property cannot be denied, for which the principal relief of re-construction of the said premises has been sought therefore stands *prima facie* proved. Defendant No. 1's plea of not having nexus stands disproved on a mere reading of the Suit plaint which is the requirement of Order VII Rule 11 of CPC.

5. That apart, averments made in the Suit plaint are to the effect that Plaintiffs were carrying out plywood business from the Suit

premises in the name and style of “Prem Plywood” until the Suit premises were demolished by Defendant No.1 under order passed by the Division Bench of this Court in Civil Writ Petition No.15202 of 2023 on the ground that they were dilapidated and Defendant No.1 desired to reconstruct and redevelop them alongwith other similarly placed premises. That order of the Division Bench passed in Civil Writ Petition No.15202 of 2023 is appended at page No.56 of the CRA.

6. In view of the above admitted facts, it cannot lie in the mouth of Defendants to contend that there is no cause of action on the part of Plaintiffs which would entitle and enable them to maintain the Suit proceeding. Infact, Application under Order VII Rule 11 of CPC on this count is not maintainable in such facts of the present case. Once Defendant No.1 has accepted rent from the predecessor-in-title of the Plaintiffs as also from Plaintiffs, issued rent receipts to them, then any action taken by Defendant No.1 resulting in ouster of Plaintiffs’ from the suit premises due to any alleged forcible act of demolition which has been claimed to be illegal by Plaintiffs, the Plaintiffs are entitled to maintain the Suit for the reliefs claimed and a trial is imminent. There is no law or Authority of law in this country which would enable and entitle the landlord to forcibly demolish the structure / structures occupied by his tenant take forcible possession of the premises and thereafter deny the right of the tenant / legal heirs of the tenant to approach the appropriate Court / Authority on the plea

of having no nexus. When in the facts of the present case Plaintiffs as also their predecessor-in-title is recognised as tenant by Defendant No.1 – landlord, the grounds argued by Defendants for maintainability of their Application under Order VII Rule 11 of CPC are not maintainable.

7. In the course of submissions, my attention is drawn to paragraph Nos.11 to 14 of the Suit plaint by Mr. Savant. What is stated in the paragraphs under reference present a very shocking picture, it just shows the high handed manner in which Defendant No.1 has dealt with the premises occupied by Plaintiffs. Unfortunately Plaintiffs have been made to run from pillar to post due to the action of Defendant No.1. Defendant No.1 may even justify its action, to some extent on the ground that the Suit premises were dilapidated and required demolition, but the real picture is something different. By virtue of the said action, substantive right of Plaintiffs have been trampled without recourse to law as alleged by Plaintiffs. If Plaintiffs cannot approach the appropriate Authority / Civil Court, there would be no remedy whatsoever available to them in law.

8. For considering an Application under Order VII Rule 11 of CPC, the Supreme Court categorically states that the Suit plaint will have to be seen. Averments in the Suit plaint are clearly corroborated and supported by the substantive *prima facie* evidence which is

required to be looked at by the Court to ascertain the veracity of the averments made in the Suit plaint. Defendant No.1 does not deny its own rent receipts issued to Plaintiffs' and their predecessor-in-title.

9. I see no reason as to why I have to disbelieve the case of the Plaintiffs as averred in the Suit plaint. Hence, submissions made by Mr. Savant on the ground that Plaintiffs are no longer in possession of the Suit premises and they ought to have sought a declaratory relief for seeking declaration for reconstruction of premises or injunctive relief cannot be accepted. *Prima facie*, Plaintiff' substantive right in the Suit premises has been proved.

10. Mr. Savant has also argued the issue of under valuation of the Suit plaint and Plaintiffs having considered Application of Rule 40 of the Maharashtra State Waqf Rules, 2003. According to Mr. Savant, the correct Rule that would be applicable would be the under the subsequent Rules issued by the Maharashtra State Wakf Rules, 2022 which according to him are in supersession of the Wakf Rules of 2003 and any other existing Rules. He would draw my attention to the amended Rule 50 in the year 2022 which pertains to payment of Court fee and more specifically Sub-Rule 1 which states that every Application, Plaint or Memorandum of Appeal or an Application for execution or other Application shall be accompanied by a Court fee as may be fixed by the State Government, from time to time. He would

argue that a substantive logical interpretation of this Sub-section would mean that Plaintiffs would have to pay *ad valorem* Court fee in view of the words “as may be fixed by the State Government, from time to time” appearing in the said Sub-section. It needs to be noted that the Suit has been filed before the Tribunal at Aurangabad, which is a special Tribunal which determines the jurisdiction with respect to the cause of action of the properties belonging to Defendant No.1 and which are designated and declared as Wakf properties under the said statute.

11. On reading the said provision, I would not agree with the proposition advanced by Mr. Savant so as to consider reading of Sub-section 1 as equivalent to a party filing a Suit proceeding in the Tribunal and requiring to pay *ad valorem* Court fee. Nevertheless, the Tribunal has dealt with the said issue from paragraph No.10 onwards in the impugned order by relying on two specific decisions of this Court, which were passed by considering the provisions of Rule 40 of the 2003 Rules. Until the ratio in the said decisions is overcome by any subsequent decision of this Court, I am not inclined to accept the submissions made by Mr. Savant. Nevertheless, it shall be open to Defendants to seek framing of an appropriate issue, if they so desired on the issue of payment of Court fee and the learned Tribunal shall decide the same strictly in accordance with law, if the same is allowed to be framed. Mr. Kanade in response to this objection, on instructions

would submit that Plaintiffs are not averse to pay Court fees in accordance with law, if so determined and directed.

12. Mr. Savant, learned Advocate for Applicant in the course of his submissions has referred to and relied upon the decision of the Supreme Court in the case of *Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by Lrs. and Ors.*¹ and would draw my attention to paragraph No.12 wherein the Supreme Court in the facts of that case has framed certain questions. One of the question framed by the Supreme Court is whether in the facts of that case, Plaintiffs ought to have filed the Suit for declaration, title and injunction. I have perused the said decision. The above judgment of the Supreme Court is principally and entirely on completely different set of facts which pertain to a gift deed of land made in favour of legal heirs and a dispute having arisen thereon between the said legal heirs to the extent of the gift deed and share of the property / estate of their predecessor, who are their parents.

13. In that context, whether the Plaintiffs ought to have filed a declaratory relief for their share or not was the question raised before the Supreme Court. In the present case, facts are not akin to the facts of the case decided by the Supreme Court. Here there is no dispute between the relationships of parties, though Application under Order VII Rule 11, Defendants have denied the same. But equally the *prima facie* evidence produced alongwith the plaint and the averments in the

¹ (2008) 4 SCC 594

Suit plaint cannot be denied by Defendants. Therefore, I am not inclined to accept the submission made by Mr. Savant that Plaintiffs ought to have sought a declaratory title relief.

14. In that view of the matter, the impugned order passed by the Tribunal dated 29.08.2024 is a cogent and reasoned order and calls for no interference whatsoever and is strictly passed in accordance with law. Averments made in the Suit plaint are in consonance with the provisions of Order VII Rule 11 of the CPC. Therefore, the impugned order is sustained and upheld.

15. At the request of Mr. Kanade, learned Advocate for Respondent Nos.1 to 4 and in view of the facts of the present case, request is made to expedite the Suit proceedings before the Tribunal. In the facts of the present case and the sufferance of the Plaintiffs as can be *prima facie* made out from reading of the Suit plaint, I am inclined to accept the request made by Mr. Kanade and direct the learned Tribunal to decide the Waqf Suit No.127 of 2024 pending before it as expeditiously as possible and in any event within a period of one year from today.

16. It is directed that parties shall not take any unnecessary adjournments and the Tribunal shall grant adjournments only if it is utmost necessary in the case of any emergency or exigency.

17. Needless to state that the learned Tribunal shall not be influenced by any of the observations and findings returned in the impugned order and this order.

18. Parties are directed to cooperate with the Tribunal for expeditious disposal of the Waqf Suit.

19. All contentions of both the parties are expressly kept open before the Tribunal.

20. Parties shall be at liberty to lead their respective cogent evidence as available to them in law and evidence in rebuttal which shall be considered by the learned Tribunal for adjudicating the *lis* between the parties.

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

[MILIND N. JADHAV, J.]

Ajay

AJAY
TRAMBAK
UGALMUGALE
Digitally signed by
AJAY TRAMBAK
UGALMUGALE
Date: 2024.12.03
17:38:16 +0530