



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL REVISION APPLICATION NO.112 OF 2024

Suresh s/o Lataruji Ramteke

(Vs.)

Pravin s/o Dadaji Aakhade

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr.S.K. Bhoyar, Advocate for the applicant.

CORAM : G.A. SANAP, J.

DATE : 29.11.2024

Heard learned Advocate for the applicants. Perused the record and proceeding.

2. In this revision application, challenge is to the order dated 19.09.2024 passed by learned 3rd Joint Civil Judge (Junior Division), Gadchiroli, whereby the learned Judge rejected the application made by the defendant under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short, 'the C.P.C.') for rejection of plaint.

3. It is submitted that the suit filed is false and frivolous. There is no cause of action for filing the suit. The prayer made in the suit is defective. No relief can be granted on the basis of

such a defective prayer. It is also submitted that map to show the alleged encroached area of the land by the defendant has not been filed on record.

4. I have gone through the plaint, the written statement and the order passed by the learned Judge dated 19.09.2024. The learned Judge has considered all the factual and legal aspects, relevant for the purpose of deciding the application under Order VII Rule 11 of the C.P.C. Learned Judge has observed that the plaint discloses cause of action. The principal grievance of the plaintiff is that he had purchased the land survey No.852/1 from one Sangita Sudhakar Yengandalwar on 27.04.2007. The sale deed has been filed on record. The map of the property purchased by the plaintiff under the sale deed is a part of the sale deed. Learned Judge has observed that the map filed with the sale deed and the measurement sheet shows that the land, as on date, in possession of the plaintiff, is less than the land purchased under the sale deed.

5. According to the plaintiff the defendant has encroached on 750 sq.ft. land. The plaintiff has filed the suit for possession of the encroached area from the defendant. Learned Judge has also observed that while deciding such an application,

the Court has to see the averments made in the plaint and not the defence of the defendant set out in the written statement. Learned Judge has observed that no case has been made out to grant the prayer for rejection of the plaint under Order VII Rule 11 of the C.P.C.

5. On perusal of the plaint and the order passed by the learned Judge, I am satisfied that learned Judge has not committed any error. The plaintiff would be required to prove that the defendant has encroached upon the area of 750 sq.ft. land belonging to him by the defendant. While deciding the application for rejection of plaint, the finding of fact cannot be recorded on merits. The parties would be required to lead evidence and prove the factual position. Perusal fo the plaint, in entirety would show that it spells out the basic grievance of the plaintiff and the cause of the action.

6. In view of this, I do not see any substance in the revision application. The Civil Revision Application, being devoid of merits deserves to be dismissed. It is accordingly dismissed.

JUDGE