



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

7 CRA NO. 17 OF 2025

KASHINATH NABAJI DHAKNE
VERSUS
KADUBA KUSHABA RITHE

...
Advocate for the Applicant : Mr. Dahale Ganesh Suryakant
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CORAM : S. G. CHAPALGAONKAR, J.

Dated : 14.01.2025

PER COURT :-

1. The present Revision Application is filed impugning the order dated 10.12.2024, passed by the Civil Judge, Junior Division, Aurangabad, below Exh. 19, in RCS No. 37 of 2023, by which the applicant's prayer for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure has been declined.

2. The respondent/plaintiff instituted RCS No. 37 of 2024 seeking a decree of perpetual injunction against the defendant in respect of the suit land. The plaintiff asserts his ownership and possession based on the sale deed dated

14.02.2000. According to the plaintiff, the defendant caused illegal change in the mutation record in connivance of Revenue Officers and recorded 12 R land in his name, which is a part and parcel of plaintiff's ownership and possession.

3. The applicant/defendant filed an application seeking rejection of the plaint, below Exh. 19. The trial Court after considering the rival submissions, rejected the application vide impugned order dated 10.12.2024.

4. Mr. Dahale, learned Advocate appearing for the applicant submits that the plaintiff is raising a dispute as regards the mutation entry by filing a suit. He has already assailed the mutation entry before the Competent Authority under the Land Revenue Code and that dispute is pending before appellate authorities. As such, the Civil Court has no jurisdiction to deal with the correctness of the mutation entry. The suit filed by the plaintiff assailing such mutation entry, would not be maintainable, as such the plaint is liable to be rejected. In support of contention, learned Advocate relied upon following case laws :

"1) Ishwar Vs. Gram Panchyat Parali Khurd reported in LAWS(SC)-2022-10-89 (Punjab and Harayana High Court),

2) P.Kishore Kumar Vs. Vitthal K. Patkar-reported in Civil Appeal No. 7210 of 2011, dated 20.11.2023, (Supreme Court of India),

3) Dhulabhai Vs. State of Madhya Pradesh – reported in LAWS(SC)-1968-4-49,

4) R. Pappa Naicker (deceased) and Another Vs. P. Chinnasawami and others - S.A. No. 449 of 2012, Dated 04.04.2019, Madras High Court,

5) B.P. Channa Keshava Shetty Vs. State of Karnataka, LAWS(KAR)-2011-8-1 decided on August 04, 2011, Karnataka High Court,

6) Essex Farms Private Limited Vs. Delhi Transport Corporation – LWAS(DLH)-1995-9-91, decided on September 01, 1995, Delhi High Court."

5. Having considered the submissions advanced, it can be observed that the respondent/plaintiff instituted a suit seeking decree of perpetual injunction for restraining applicant/defendant from interfering in his possession over the suit property. So also seeks injunction from alienating or creating third party interest based on mutation entries. Apparently the respondent/plaintiff asserted his title and

possession and contends that on the basis of incorrect mutation entries defendant is disturbing his possession, so also likely to create third party interest in the suit property.

6. The grant of decree of perpetual injunction under provisions of Specific Relief Act, is exclusive domain of Civil Court. The contentions and the prayers in the suit, nowhere depicts that the respondent/plaintiff has any way challenged the mutation entries or seeking any relief as against the mutation entries. Admittedly the respondent/plaintiff has already resorted his remedies under the MLR Code, assailing the Mutation entries and restricted his prayer in suit for grant of decree of perpetual injunction. In that view of the matter, the trial Court is justified in rejecting the application filed by the applicant/defendant under Order VII Rule 11 of the CPC. No jurisdictional error is brought to the notice of this Court, hence the Civil Revision Application sans merit and is dismissed.

(S. G. CHAPALGAONKAR)
JUDGE

mahajansb/