



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO.34 OF 2025

1. Parvatibai W/o. Lingram Surkamble,
Age 75 yrs. Occ. Household,
R/o Janata Colony ambetkar Nagar,
Nanded Tq. Dist. Nanded.

2. Rajkumar S/o Lingram Surkamble,
Age 68 yrs. Occ. Legal Practicenor,
R/o Janata Colony Ambetkar Nagar,
Nanded Tq. Dist. Nanded.

..Applicants
(Orig. Defendants)

Versus

Piraji S/o Narayanrao Pawade,
Age 45 yrs. Occ. Agri
r/o At Post Wadi (Bk)
Tq. Dist. Nanded.

..Respondent
(Orig. Plaintiff)

...

Mr. S. B. Ghatol Patil, Advocate for the Applicants.
Mr. R. B. Narwade (Patil), AGP for Respondent.

...

**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 18th MARCH, 2025.**

ORDER:-

1. The applicants (original defendants in Regular Civil suit No.119/2024) impugn order passed below Exhibit-37, thereby declining their prayer for rejection of plaint, invoking Order VII Rule 11 of Code of Civil Procedure. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The respondent/plaintiff instituted Regular Civil Suit No.119/2024 seeking relief of perpetual injunction restraining defendants or their agents from causing obstruction and inference into peaceful possession of plaintiff over Plot No.10 forming part of land Survey No.27 (Kha) admeasuring 1650 sq. ft. situated at Wadi (Bk.) Taluka and District Nanded, more particularly described in paragraph no.1 of plaint. According to plaintiff, suit land was originally owned by Shriram Abaji Pawde. It was previously numbered as Survey No.27-C and re-numbered as Survey No.27 (Kha). He sold 40R land from his ownership to Chandrakant Raghunath Goje, Madhavrao Rukhmaji Pawde, Godavari Jagat Rao Mule and Dr. Deepak Madhukarrao Ade under registered sale deed dated 27.11.1984. Later on, Madhavarao Rukhmaji Pawde sold Plot No.10 carved out from land to one Gajanand Premji Chawda under registered sale deed dated 01.02.2013. Accordingly, mutation was carried. In that sale deed, old Survey No.27-C was wrongly mentioned, which was later on corrected as Survey No.27 (Kha), so also correction was carried as regards to East side boundary road from 20 feet to 30 feet. Mr. Gajanand Chawda sold his plot to plaintiff under registered sale deed dated 22.08.2023. Since then, plaintiff became absolute owner and possessor of plot. However, defendants are obstructing and interfering in his possession over suit plot and trying to encroach from Northern side. The plaintiff contends that on

26.02.2024, defendants caused obstruction and interference in his possession over Plot No.10. Hence, cause of action arose to file suit.

3. The defendant nos.1 and 2 caused appearance, filed their written statement, so also presented application below Exhibit-37 seeking rejection of plaint on the ground that suit is based on fictitious cause of action, plaint is not appended with map showing boundaries in terms of requirement of Order VII Rule 4 of Code of Civil Procedure.

4. The Trial Court after considering rival contentions, rejected application holding that issues raised by defendants requires trial and on the basis of contents of plaint, his contention regarding absence of cause of action cannot be countenanced.

5. Mr. Ghatol Patil, learned Advocate appearing for applicants submits that although plaintiff has pleaded in paragraph no.8 of plaint that defendants are adjacent holders of property from Northern side of suit property, there is no material in support of such contention. According to him, as per sale deed of plaintiff, suit property is not part of Survey No.27 (Kha). The plaintiff could not place on record authorized map or lay out to establish his boundaries. The suit is filed only with intention to create nuisance to defendants, who are old age persons. The plaintiff cannot have

cause of action against defendants. According to him in absence of map of four boundaries, suit itself is not maintainable.

6. Mr. Ghatol Patil would endeavour to invite attention of this Court to measurement maps of Gut No.27 dated 20.11.2012 and 07.12.2020 to contend that boundaries and survey number have already been carved out as per measurement of Surveyor. If plaintiff has any objection to boundaries depicted in such measurement, his remedy is to file proceeding under Section 144 of the Maharashtra Land Revenue Code and not suit.

7. Per contra, Mr. Narwade, learned Advocate appearing for respondent supports impugned order.

8. Having considered submissions advanced and on perusal of record, apparently defendants seek rejection of plaint on the ground that it sans cause of action. A cause of action is a bundle of facts, and in certain cases, there may be multiple causes of action. However, while considering a plea for rejection of plaint, Court must determine whether plaintiff has the right to seek relief based on facts pleaded in plaint. It is trite that, while entertaining application under Order VII Rule 11 of Code of Civil Procedure, Court must limit its inquiry to the contents of plaint and documents appended thereto. The defence put forth in the written statement or the documents relied upon by the defendants would

not germane to such an inquiry. The Court has to find out whether cause of action as pleaded is illusory or fictitious.

9. In light of aforesaid principles of law, if contents of plaint are considered, it can be observed that plaintiff is claiming himself to be owner of suit property on the basis of registered sale deed and assert that defendants, who are adjacent land holder from Northern side are obstructing his enjoyment of property. The defendants are trying to contend that there is no common boundary between land of plaintiff and defendants and, therefore, plaintiff cannot have any cause of action to institute suit. However, from conscious reading of plaint and on perusal of document appended thereto, at this stage such conclusion cannot be drawn. It would be matter of evidence to be laid by parties after framing of issues. The falsity of contents of plaint cannot be determined at this preliminary stage. It would be for defendants to establish that suit is based on false pleading or plaintiff cannot have any right to seek decree of perpetual injunction in respect of suit property against defendants.

10. The Trial Court observed that plaintiff has specifically pleaded cause of action dated 26.02.2024, when defendants obstructed his possession over suit property. Therefore, suit cannot be said to be without cause of action. The question whether four

boundaries of property mentioned in suit are correct or not cannot be decided at this stage. As such, no perversity or jurisdictional error is discernible from impugned order.

11. Consequently, Civil Revision Application stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/March-2025