



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

CIVIL REVISION APPLICATION NO. 94 OF 2025

Bhika Harchand Bhil (Sonwane) .. Applicant

Versus

Pandurang Shyamala Mali and others .. Respondents

Shri Mahesh K. Bhosale, Advocate for the Applicant.

Shri Yatish G. Gujrathi, Advocate for the Respondent Nos. 1 to 10 through V/C.

CORAM : SHAILESH P. BRAHME, J.

DATE : 12TH DECEMBER, 2025.

FINAL ORDER :

. Applicant – original defendant No. 1 is assailing order of rejection of his application 207 preferred under Order VII Rule 11 of the Code of Civil Procedure (for the sake of brevity and convenience hereinafter referred as to the ‘C. P. C.’) in R. C. S. No. 516 of 2012, which is filed for injunction simplicitor.

2. At the outset, it is necessary to mention that application Exhibit 207 U/O VII Rule 11 of the C. P. C. was filed on 17.10.2024 at the stage when suit was fixed for final arguments of the parties. The evidence was already led and the suit was on the verge of conclusion. The Trial Court already formulated issues pertaining to maintainability of the suit as well as jurisdiction of the Court in view of Sec. 36-A of the Maharashtra

Land Revenue Code (for the sake of brevity and convenience hereinafter referred as to the 'M. L. R. Code').

3. The controversy pertains to land survey No. 228, which was belonging to forefathers of the respondents. It was confiscated by the government in the year 1941-1942 for defaulting the land revenue. It is contended to be in possession of the forefathers. The possession of the respondents is stated to be obstructed by the applicant. The decree passed in R.C.S. No. 370 of 1975 of perpetual injunction against father of the applicant and Tarachand has also been referred in the plaint. The respondents are stated to have rival claim against the suit land and intended to alienate the same, hence R.C.S. No. 516 of 2012 is filed.

4. Applicant contested the suit. It reveals from the application Exhibit 207 preferred by the applicant that the suit land was allotted to their forefathers by the government as it was a barren land in the year 1945-1946. The revenue record shows allotment of the suit land to Zuga Devaji Bhil on new tenure and as per the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act (for the sake of brevity and convenience hereinafter referred as to the 'Restoration of Lands Act') and M. L. R. Code. A kabuliyat was also issued while allotting the land. Applicant being tribal has right, title and interest in the suit land.

5. In this backdrop, application Exhibit 207 was submitted by the applicant seeking rejection of the plaint as no cause of action is stated, there can be no right to sue to the plaintiffs and there is bar of jurisdiction U/Sec. 10 of the Restoration of Lands Act and Sec. 36-C of the M. L. R. Code.

6. Learned counsel Mr. Bhosale for the applicant made submissions on the line of application Exhibit 207. My attention is adverted to the plaint to buttress that in fact there is no cause of action. It is contended that the jurisdiction of the Civil Court is barred and injunction cannot be granted. It is further submitted that in a previous suit a plea of transferee in possession vide agreement dated 24.05.1974 was taken. It is further submitted that when the issue of tenancy is involved, even suit for injunction simplicitor is not entertainable.

7. Per contra, learned counsel Mr. Gujrathi supports the impugned order. He would submit that the suit is at the verge of final arguments of the counsels. Already necessary issues are framed. The Trial Court would consider the objections of the applicant while deciding the suit. It is further submitted that application Exhibit 207 is not tenable, which was filed at belated stage.

8. I have considered rival submissions of the parties. The issues of jurisdiction of the Court as well as maintainability of the suit are framed along with other issues. A meaningful

reading of the plaint does not spell out any issue of tenancy as well as any issue which is triable by the competent forum U/Sec. 10 of the Restoration of Lands Act as well as U/Sec. 36-C of the M. L. R. Code. Neither the cause of action, nor the pleadings or the prayers of the respondents-plaintiff are founded on transfer or restoration of tribal land or the damages. It is simplicitor suit for injunction.

9. It is incomprehensible as to how the issue of tenancy is involved in the matter. The suit refers to earlier R.C.S. No. 370 of 1975, in which decree of perpetual injunction was passed. In that case a plea that agreement to sale was executed on 14.05.1974 in favour of Shenfadu Shamla Mali, predecessor of the respondent was taken, but that itself is not sufficient to infer that any issue requiring adjudication by the competent forum under Restoration of Lands Act or M. L. R. Code is germane in the suit. I find no merit that there is no cause of action in the present suit or the one shown in the plaint is illusory. The learned counsel for the applicant is unable to point out any provision which bars entertaining of the suit for injunction of not to create third party interest.

10. Reliance is placed on the judgment of the Single Judge in the matter of Sulochanabai Suryabhan Nande and others Vs. Namdeo Champati Khokle and others reported in *2022(1) All MR 569*. It was not a matter involving an inquiry U/O VII Rule 11 of the C. P. C. It was pertaining to framing of the preliminary issue. The facts are

distinguishable. This judgment will not help the applicants.

11. Learned counsel for the applicant has strongly relied on the judgment of the Division Bench of this Court in the matter of Bhagwanrao Jijaba Auti Vs. Ganpatrao Mugaji Raut and another reported in *1987(3) Bom.C.R. 258*. I have carefully gone through para Nos. 24, 27 to 31 of the judgment. Question which was referred was as follows :

“In a suit simplicitor for a permanent injunction, is it necessary to frame an issue of tenancy either of the plaintiff or of the defendant ?

12. It was answered as follows :

32. Having, therefore, considered the conflicting view in the field, we are of opinion that in a suit simpliciter for permanent injunction, it is necessary to frame an issue of tenancy either in favour of the plaintiff or the defendant, as the case may be.

13. The issue of tenancy has not been raised by either of the parties in the present suit. The Trial Court did not frame issue to that effect. If the applicant and other defendants want to raise the issue of tenancy, then that would be as a matter of defence which cannot be considered for deciding application U/O VII Rule 11 of the C. P. C. The judgment is of no avail to the applicant.

14. Further reliance is placed on the judgment of Supreme

Court in the matter of Correspondence, RBANMS Educational Institution Vs. B. Gunashekar and another reported in *AIROnline 2025 SC 249*. On the basis of the said judgment it is tried to be contended that present suit is not maintainable as there was no privity of contract between the parties. The agreement to sale does not confer any right on the proposed purchaser under the agreement. The facts in the matter before the Supreme Court are distinguishable, albeit, in that case also injunction not to create third party interest was solicited. In the present matter it is nobody's case that there was contract between the parties. The plaint does not spell out any plea of agreement to sale. This judgment is also of no avail to the applicant.

15. I have my reservations for the bonafides of the applicants to press into service application Exhibit 207 belatedly at the fag end of the trial. I find no perversity and illegality in the impugned order. The civil revision application is dismissed.

[SHAILESH P. BRAHME J.]

bsb/Dec. 25