



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

42 CRA NO. 77 OF 2024

ASHOK GUNDERAO GADHAVE
VERSUS
SHESHRAO TUKARAM GADHAVE AND ORS.

...

Advocate for the Applicant : Mr. Narwadkar Mrigesh D.
Advocate for Respondent Nos. 1 & 2A to 2E : Mr. Sameer S. Kurundkar
h/f Mr. Sunil V. Kurundkar,
AGP for Respondent Nos. 4 & 7/State : Mr. V.S. Badakh

...

CORAM : S. G. CHAPALGAONKAR, J.
Dated : 24.02.2025

PER COURT :-

1. Heard Mr. Narwadkar, learned Advocate appearing for applicant, Mr. Kurundkar, learned Advocate for respondent and Mr. V.S. Badakh learned AGP for respondent State.
2. Applicant impugns order dated 29.02.2024 passed below Exh. 98, thereby declining prayer of the applicant/defendant to reject plaint under Order VII Rule 11 (a) to (d) of the Code of Civil Procedure.
3. Respondent/plaintiff filed a suit seeking declaration of ownership and perpetual injunction restraining defendant Nos. 1 to 4 from causing obstruction and interference in peaceful possession of plaintiff over Gut No. 46 and 47 situated at Village Kabnoor, Tq. Mukhed District Nanded.
4. Defendant No. 6/applicant filed an application seeking rejection of plaint on the ground that suit sans cause of action. Trial Court after considering submissions advanced rejected application vide impugned order dated 29.02.2024.

5. Mr. Narwadkar, learned Advocate appearing for applicant submits that Competent Authority under Consolidation Act passed an order directing measurement of 'Pot Hissa' in land Survey No. 16/1 to 16/3. Authority has issued notice for measurement as per direction of Deputy Director of Land Records, Aurangabad, thereafter, present suit has been filed. According to him, when Competent Authority has passed order, plaintiff could not have filed suit seeking injunction against authorities for executing order as regards measurement of land and fixation of boundaries and 'Pot Hissa' as land Survey No. 16, Mr. Narwadkar, would submits that plaint based on such cause of action is liable to be rejected.

6. Learned Advocate appearing for respondents supports the impugned order contending that there was family partition and un-equal shares were given to parties. Grand-father of plaintiff never challenged aforesaid partition consequently mutation was effected. It was carried forward during consolidation. However, after 35 years, illegal orders have been passed by authorities challenging title of plaintiff and possession is likely to be disturbed. As such cause of action arose to file suit.

7. Having considered the submissions advanced, it can be observed that suit has been instituted claiming multiple reliefs. Plaintiffs are claiming declaration of ownership and injunction in respect of suit property against defendant thereby restraining them from causing obstruction and interference into his possession.

8. Issue as to title/ownership of the suit property can be decided only by competent Civil Court. Authorities under Consolidation Act cannot venture into issue of title. They can discharge their function in tune with provisions of said Act. When plaintiff has apprehension that his title and possession is likely to be prejudiced by action of defendants, he can very well file suit seeking relief of declaration and ownership and perpetual injunction. Defendant No. 6 filed application seeking rejection of plaint

contending that there is no cause of action to file present suit. However, such contention cannot be countenance for reason that plaintiff was served with notice by defendant No. 1 to 5 for measurement of land thereby raising cloud of doubt on his ownership rights and enjoyment of possession over suit property.

9. In that view of the matter, it cannot be said that plaintiff has no cause of action to file suit and seek relief of declaration of his ownership and perpetual injunction. The Court may grant appropriate relief without disturbing Competent Authority under Consolidation Act to discharge function in accordance of law, so also protect interest of plaintiff.

10. In that view of the matter there is no fault in the impugned order.

11. In result, Civil Revision Application stands rejected.

(S. G. CHAPALGAONKAR)
JUDGE

mahajansb/