



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

CIVIL REVISION APPLICATION NO. 110 OF 2022

Vimalbai Rajaram More And Others

VERSUS

Pralhad Dadarao Kshirsagar Thr. His Special Power Of Attorney
Purshottam P Khirsagar And Others

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Advocate for applicants : Mr. A C. Darandale

Advocate for Respondent 1 : Mr. N K Tungar

Respondent nos.2,3 and 4 – Deleted.

Resp Nos.5A, 5B, 5C-1 to 5C-4, 5D/1, 5E/1 to 5E-3 are served.

Resp Nos.5F, 6a/1 To 6a/3,7,8,9a To 9c, 10, 12a, 13a, 13b, 13c
To 13e, 14 To 16 Served

Respondent No.11- Dead.

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WITH

CIVIL APPLICATION NO. 14896 OF 2022 IN CRA/110/2022

CORAM : S. G. CHAPALGAONKAR, J.

Dated : March 10, 2025

FINAL ORDER :-

1. The applicants/original defendant nos.4, 5 and 6 impugns the order dated 11.7.2022 passed by the Civil Judge Senior Division, Beed below Exhibit-1 in R.C.S. No.219 of 2022, thereby declining prayer for rejection of plaint invoking Order VII Rule 11 of the Civil Procedure Code.

2. In brief, facts giving rise to the present application can be summarized as under :-

One Krushnabai w/o Vitthalrao Shelke had instituted the R.C.S. No.127 of 1992 before the Civil Judge S.D., Beed against in all 14 defendants seeking relief of partition and separate possession of 8 Ana share in the suit property i.e. agricultural land S.No.84, admeasuring 33A 10 Gunthas, situated at Taraf Bobade, Tq. & Dist. Beed. She contended that one Janu Kshirsagar was the original owner of suit land. He died leaving behind two sons namely Bhau s/o Janu Kshirsagar and Ramrao Janu Kshirsagar. Bhau being elder brother, was Karta and Patedar of the land and younger brother Ramrao was co-sharer. Ramrao expired on 15.11.1961 leaving behind plaintiff as his heir. Bhaurao had also expired just before Ramrao in the month of October, 1961 leaving behind Bhanudas, Dadarao, Bajirao, Bansi, Barku and Maruti as his heirs.

3. The defendants are L.Rs. of Barku, Bhanudas, Bhaurao, Dadarao. It is further pleaded that defendant no.12 i.e. nephew and son of defendant no.1 purchased suit property from other defendants. Such alienation's are illegal, invalid and collusive. The suit came to be decreed and plaintiff Krishnabai through her legal heirs held to be entitled for joint

8 Ana share in suit land bearing Survey No.84. The aforesaid decree was assailed by defendants in R.C.A. No.36 of 2009 before District Judge, at Beed. However, same had been confirmed by the Appellate Court vide judgment and decree dated 7.10.2017. Second appeal filed against said decree is also dismissed. Eventually, decree was put to execution vide R.D. No.41 of 2020 and transmitted to District Collector u/s 54 of Civil Procedure Code.

4. At this stage, respondent no.1/original plaintiff filed R.C.S. No.219 of 2022 seeking relief of declaration that he is bonafide purchaser of suit property and adjustment of land possessed by him against share of his vendor i.e. Bajirao Kshirsagar and perpetual injunction against defendant from obstructing and interfering in his possession over the suit property.

5. In the aforesaid background, learned Judge of the Trial Court was pleased to pass an order below Exhibit- in R.C.S. No.219 of 2022, thereby framed issue as to maintainability of suit and if suit is liable to be rejected under Order VII Rule 11 (d) of the CPC and after holding that suit is

maintainable, issued suit summons to the defendant for settlement of issues.

6. Mr. Darandale, learned counsel appearing for the applicants/original defendant nos.4,5 and 6 submits that suit in present form is absolutely not maintainable. Respondent/original plaintiff was party defendant no.12 in R.C.S. No.127 of 1992 filed by Krishnabai. Suit property was subject matter of that suit. Respondent/plaintiff had filed written statement and raised plea of previous partition, so also adverse possession. Trial Court accepted case of Krishnabai and passed a decree for partition and separate possession of $\frac{1}{2}$ share in her favour. Aggrieved Respondent/plaintiff had filed R.C.A. No.36 of 2009 alongwith other defendants. The same has been dismissed and decree is confirmed in Second Appeal No.584 of 2018 by this Court. Once, plaintiff was party to that suit and suffered decree, present suit is not at all tenable and plaintiff cannot have any cause of action to file separate suit seeking relief of declaration that he is bonafide purchaser of the suit property and seek further injunction.

7. Per contra, Mr. Tungar, learned counsel appearing for the respondent no.1/plaintiff would submits that order

passed by Trial Court is just and proper. Suit is not barred by law. Cause of action arose to plaintiff when he received notice of execution of the decree passed in R.C.S. No.127 of 1992. Mr. Tungar, would submit that suit land has been purchased by plaintiff vide registered sale deed dated 26.10.1979 from Bajirao Bhaurao Kshirsagar. Plaintiff has invested huge amount for development of the land and raised construction of well. Therefore, in execution of the decree, suit land can adjusted against share of Bajirao Bhaurao Kshirsagar and possession of plaintiff can be protected by adjusting equities.

8. Having considered submissions advanced, it is apparent that plaintiff/respondent was party to R.C.S. No.127 of 1992 instituted by Krishnabai Shelke. The plaint in that suit refers to sale-deed dated 26.10.1979, serial no.3401 and finally decree has been passed upholding right of Krishnabai in suit land to the extent of $\frac{1}{2}$ share. Plaintiff unsuccessfully assailed decree by filing appeal and decree has attained finality. All aforesaid facts can be gathered from plaint in R.C.S. No.219 of 2022. In this background, when notice of execution in R.D. no.41 of 2020 is served upon the plaintiff, he asserts cause of action to file present suit to seek relief that he

be declared as bonafide purchaser and adjustment of land purchased by him under registered sale- deed against share of his vendor i.e. Bajirao Kshirsagar. Apparently, plaintiff cannot have cause of action to seek the aforesaid relief once he has suffered the decree passed by the competent court of jurisdiction and entitlement of defendants/legal heirs of Krishnabai to receive $\frac{1}{2}$ share is approved, the reliefs now sought in R.C.S. No.219 of 2022 were in fact available to be raised by way of defence in R.C.S. no.127 of 1992. Therefore, plaintiff cannot have cause of action to re-agitate same defences by filing fresh suit and claim relief of declaration on the basis of sale-deed which cannot bind right of defendants which are crystallized by a decree in R.C.S. No.127 of 1992 being legal heirs of Krishnabai.

9. It is trite that the Collector, while effecting partition of an estate under section 54 of the Civil Procedure Code, has to divide it in accordance with decree sent to him. Even in case of pendent-lite transferee, if there is no dispute, Collector may proceed to make allotment of the properties in an equitable manner instead of rejecting their claim for such equitable partition on the ground that they have no locus

standi. A transferee from a party of a properties which is subject matter of partition can exercise all rights of transferrer. Therefore, plaintiff being a party to the dispute can definitely raise his claim for equitable partition and adjustment of the land already possessed by him in execution of decree. The Collector is at liberty to make an equitable partition taking into consideration interests of all the concerned, so far as it is in conformity with work assigned to him under decree.

10. In case of **Khemchand Shankar Choudhary and others vs Vishnu Hari Patil And Others** reported in AIR 1983 SC 124, the Supreme Court issued directions to the Collector that while effecting the partition, he may consider whether fields in possession of the purchasers may be allotted to share of vendor and maintain possession of the party. It is, therefore, clear that plaintiff may have the remedy before the Collector in pending execution and not by filing the suit.

11. Now, it is well settled that vexatious litigation without cause of action has to be terminated by exercising powers under Order 7 Rule 11 of the Civil Procedure Code. In case of **Rajendra Bajoria Vs. Hemant Kumar Jalan** reported in

(2022) 12 SCC 614, the Supreme Court observed in paragraph no.20 thus :-

“20. It could thus be seen that this Court has held that the power conferred on the court to terminate a civil action is a drastic one, and the conditions enumerated under [Order VII Rule 11 of CPC](#) are required to be strictly adhered to. However, under [Order VII Rule 11 of CPC](#), the duty is cast upon the court to determine whether the plaint discloses a cause of action, by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law. This Court has held that the underlying object of [Order VII Rule 11 of CPC](#) is that when a plaint does not disclose a cause of action, the court would not permit the plaintiff to unnecessarily protract the proceedings. It has been held that in such a case, it will be necessary to put an end to the sham litigation so that further judicial time is not wasted.”

12. Further, in case of **Salimbhai and others Vs. State of Maharashtra and others** reported in 2003 I SCC 557 it is observed that powers under Order 7 Rule 11 of the Civil Procedure Code can be exercised by the Court at any stage of of the suit before registering the plaint or after issuing summons to the defendant at any time before conclusion of the trial. Sum and substance of exposition of law on exercise of the powers under Order 7 Rule 11 of the Code is that, if on a meaningful reading of plaint, it is found that suit is manifestly vexatious, without any merit and does not disclose right to sue, the Court would be justified in exercising the powers under Order 7 Rule 11 of the Civil Procedure Code.

13. In the present case, as apparent from contents of plaint, plaintiff is seeking to resist execution of a decree suffered by him by filing fresh suit and seeking a declaration which he could have asked for in earlier suit, being party defendant. In that view of the matter, Trial Court appears to have failed to exercise jurisdiction vested with him in judicious manner and reject vexatious plaint by invoking powers under Order 7 Rule 11 of the Civil Procedure Code.

14. Hence, Civil Revision Application succeeds, plaint in R.C.S No.219 of 2022 stands rejected under Order VII Rule 11 (a) and (d) of the Civil Procedure Code being vexatious and sans cause of action. Needless to state here that, respondent no.1 shall be entitled to raise his claim in tune with law laid down by the Supreme Court in case of **Khemchand** (supra) before District Collector in-charge of execution of the decree in R.C.S. No.127 of 1992. Civil Revision applications stands **disposed of**. Pending Civil application also stands **disposed of**.

(S. G. CHAPALGAONKAR)
Judge

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