



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

904 CRA NO. 135 OF 2024

RASHEED SHAH TAJ MOHAMMAD SHAH AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH DISTRICT COLLECTOR AND
OTHERS

...
Advocate for the Applicants : Mr. Sanket Kulkarni h/f Mr. Patel Shaikh
Ashpak Taher
AGP for Respondents/State : Mr. D.B.Bhange
...

CORAM : S. G. CHAPALGAONKAR, J.
Dated : 28.02.2025

PER COURT :-

1. Applicants who are defendant Nos. 3 to 10 in RCS No. 5 of 2020 pending before Civil Judge, Senior Division, Aurangabad filed this Civil Revision Application assailing order below Exh. 71 by which their prayer for rejection of plaint under Order VII of Rule 11 (d) of Civil Procedure Code has been declined.
2. Respondent State of Maharashtra, through District Collector instituted Regular Civil Suit No. 5 of 2020 seeking relief of declaration of ownership, decree in RCS No. 145 of 2010 dated 04.05.2013 is not binding upon plaintiff and perpetual injunction against defendant Nos. 3 to 10 from interfering and obstructing in possession of plaintiff over suit property.
3. Defendant appeared in suit and filed application below Exh. 71 invoking order VII Rule 11 (d) of CPC to reject plaint for want of cause of action.
4. Learned trial Court declined to accede with prayer of

defendant, consequently rejected application vide impugned order 30.07.2024.

5. Mr. Sanket Kulkarni learned Advocate appearing for applicants invites attention of this Court to judgment and decree dated 04.05.2013 passed in RCS No. 145 of 2010, by which defendant therein are perpetually restrained from obstructing and interfering in possession of plaintiff over suit land. He submits that previous suit was in respect of same property. Municipal Corporation, Aurangabad, Grampanchayat Mandki and other private persons were made parties in suit. In that suit the finding has been recorded against issue No. 3 that plaintiffs are owner and possessor of suit property. According to him, said decree attained finality. Municipal Corporation has not filed any appeal till this date. He would therefore submits that suit filed by State of Maharashtra is without cause of action as pleaded in the plaint which is fictitious. Further suit is hopelessly barred by limitation.

6. Having considered submissions advanced, it can be observed that respondent State of Maharashtra filed suit seeking declaration that decree in RCS No. 145 of 2010 is not binding upon them. It is not in dispute that in RCS No. 145 of 2010 state of Maharashtra was not made party. It is specific contention in present suit that land in question is owned by Government and it was given for dumping waste or garbage or processing waste to Municipal Corporation. The ownership of the land was retained with State of Maharashtra with limited rights to Municipal Corporation for aforesaid purpose.

7. It is further pleaded that on 10.01.2020 defendant Nos. 3 to 10 arrived on the suit property and they were ascertaining their rights on the basis of decree in RCS No. 140 of 2010 and offered suit property for sale to unknown person, as such cause of action arose to file present suit. Bare reading of pleading in the plaint it can be ascertained that defendant State of Maharashtra is claiming substantive relief of

declaration of its ownership and injunction over suit property and declaration that judgment and decree passed in RCS No. 145 of 2010 is not binding upon them, evidently triable issues have been raised in the plaint. The suit has been filed immediately after occurrence of cause of action i.e. on 17.01.2020. At this stage, it cannot be said that cause of action as pleaded is fictitious or camouflage, certainly that would be issue to be dealt in suit. In that view of the matter, no case for rejection of plaint under Order VII Rule 11 (d) of the CPC can be made out.

8. Learned trial judge has rightly dealt all contentions raised in application below Exh. 71 and rejected the same by employing adequate reasons. No jurisdictional error is brought to notice of this Court, hence Civil Revision Application stands rejected.

(S. G. CHAPALGAONKAR)
JUDGE

mahajansb/