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

CIVIL REVISION APPLICATION NO. 26 OF 2023

1. Laxmikant s/o. Vitthal Mahajan,
Age 52 years, Occ. Agri.
2. Sushilabai wd/o. Vitthal Mahajan,
Age 71 years, Occ. Household

Both R/o. Pimpalgaon Hareshwar,
Tq. Pachora, Dist. Jalgaon.

.. APPELLANTS.

VERSUS

1. State of Maharashtra
through the Collector,
Jalgaon.
2. The Deputy Collector,
Special Land Acquisition Officer,
Minor Irrigation, Jalgaon.
3. The Executive Engineer,
Minor Irrigation Department,
Mahalbal Road, Jalgaon, Tq. & Dist. Jalgaon.
4. The Executive Director,
Tapi Irrigation Development Mahamandal,
Akashwani Chowk, Jalgaon.
5. Bharatabai w/o. Yuvraj Patil,
Age 54 years, Occ. Household,
At Present R/o. Pimpri (Bk.)
At Post Pimpalgaon Hareshwar,
Tq. Pachora, Dist. Jalgaon.
6. Pyarelal s/o. Vitthal Mahajan,
Age 48 years, Occ. Service & Agri.
R/o. Flat No. 208, 2nd Floor,
Navkar Plaza, Vaki Road,

Jamner, Tq. Jamner Dist. Jalgaon.

7. Yogesh s/o. Vitthal Mahajan,
Age 44 years, Occ. Actor and Agri,
R/o. Malad Mumbai,
At present R/o. Pimpalgaon Hareshwar
Tq. Pachora, Dist, Jalgaon.

.. RESPONDENTS.

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Mr. M.V. Ghadge, advocate h/f. Mr. M.S. Tour, Advocate for applicants.
Mr. V.S. Badakh, AGP for respondent Nos. 1 and 2,
Mr. A.D. Pawar, Advocate for respondent Nos. 3 and 4.
Mr. A.M. Pawar, Advocate for respondent Nos. 5 and 6
Mr. Mahesh S. Deshmukh Advocate h/f. Mr. B.S. Deshmukh
Advocate for respondent No.7.

CORAM :S.G. CHAPALGAONKAR, J.

RESERVED ON : 20th DECEMBER, 2024

PRONOUNCED ON : 3rd JANUARY, 2025.

J U D G M E N T : -

1. The applicants(original defendant Nos. 5 and 6) impugns order dated 18.11.2022, passed below Exh.49 in Special Civil Suit NO. 158 of 2021, by civil Judge (S.D.), Jalgaon thereby rejecting prayer of applicants seeking rejection of plaint under Order 7 Rule 11 of C.P.C.
2. For sake of convenience, parties are referred to, as per their original status.
3. Plaintiffs contend that Gat No. 87 situated at village Kolhe, Taluka Pachora, houses thereon, plot situated in Gat No. 2/45/B at

Pimpalgaon Hareshwar, house property thereon, House No. 1105 situated at Pimpalgaon Hareshwar, Taluka Pachora are ancestral properties of plaintiffs and defendant Nos. 5 to 8. Their father – Vitthal Mahadu Mahajan was in Government service. He purchased aforesaid properties for benefit of family in name of defendant No.5. when agricultural land Gat No. 87 was purchased under registered sale deed dated 14.12.1987, defendant No. 5 was aged about 16 years. After purchase of aforesaid lands, development was carried by Vitthal Mahajan, two wells and two houses have been constructed in the land.

4. In the year 1996-97 some portion of the land Gat No. 87 has been acquired for Pimpri Dambhurni Minor Irrigation Project. The proceeding of land acquisition was initiated in name of defendant No.5 since the land was recorded in his name. It was understood that compensation amount shall be shared amongst plaintiff and defendant Nos. 5 to 8. The first part of compensation for 1 Hectare 13 R land was paid in file Land Acquisition No. 8 of 1998 during lifetime of Vitthal Mahajan. The LAR No. 2320 of 2005 was filed for enhancement of compensation under Section 18 of Land Acquisition Act, in which enhanced award has been passed. Total compensation of Rs. 3,20,00,000/- (Three Crore twenty Lakhs) has been deposited in F.A. No. 1385 of 2019 which is pending before this Court. However, defendant No.5 got released amount of Rs. 2, 05, 48,169/- in his personal account.

5. Second acquisition has been done for 1 Hectare 45 R, from Gat No. 87 alongwith house and fruit bearing trees. The compensation paid by Government has been utilized for benefit of family of plaintiff and defendant Nos. 5 to 8. LAR No. 158 of 2019 was filed under Section 18 for enhancement of compensation in the name of defendant No.5.

The enhanced compensation of Rs. 93,30,161/- + 30% Solatium, 12% component and interest has been awarded. The plaintiff has the right to receive 1/5th share in compensation amount and 1/5th share in remaining land admeasuring 1 Hectare 66 R, apart from land situated in Gat No. 245B. However, defendant No.5 refused to effect partition as claimed. According to plaintiff, cause of action arose on 8.6.2021 when defendant No.5 refused to grant share of the plaintiff in the ancestral property.

6. Applicants (original defendant Nos. 5 and 6) filed application below Exh.49 seeking rejection of plaint, contending that suit is barred by limitation and sans cause of action. The original plaintiff contested application. The learned Civil Judge (S.D.), Jalgaon vide impugned order dated 18.11.2022 rejected application.

7. Mr. Ghatge, learned advocate for applicants (original defendant Nos. 5 and 6) submits that there was previous partition of the suit property. The cause of action shown in suit is illusory. The suit is filed by suppressing material facts. According to him, from contents of documents appended to plaint, it can be seen that suit properties were already partitioned. Plaintiff received his share in joint family properties as well as received compensation towards acquired lands from his share. By inviting attention of this Court to award passed by the Land Acquisition Officer, Mr. Ghatge would contend that plaintiff received compensation in respect of Gat No. 86/A/1, whereas, defendant No.5 received compensation in respect of land Gat No. 87. Plaintiff never raised objection before Land Acquisition Officer when compensation amount was disbursed towards acquisition of respective lands in Gat Nos. 86 and 87. The plaintiff has conveniently suppressed material fact that

he received compensation as regards Land Gat No. 86/A/1 and now, when defendant No.5 received enhanced compensation in respect of Gat No. 87, filed present suit on the basis of illusory cause of action.

8. Mr. Ghatge would further point out that meaningful reading of plaint would suggest that plaintiff has interest in enhanced compensation amount received by defendant No.5 in respect of Land Gat No. 87. Although, suit is pretended to be for partition and separate possession of ancestral properties, only object discerned from pleading of suit is to create an obstacle to defendant No.5 to receive compensation of his land.

9. Mr. Ghatge, relies upon the observations of this Court in the matter of *Comunidade of Bombolim vs. Manguesh Betu Kankonkar reported in 2001(2) Mh.L.J. 160; Shri Xavier D'souza and another Vs. Shri Luis D'souza and another reported in 2009(2) All M.R. 397;, and Nitin Keshavlal Shah vs. Pratima w/o. Nayankumar Shah and others 2024(3) All M.R. 267*

10. Mr. Ghatge further relies upon the judgments of Supreme Court in case of *Dahiben vs. Arvinbhai Kalyanji Bhanusali (Gajra) (d) through LRS and others reported in (2020) 7 SCC 366 and Shakti Bhog Food Industries Ltd vs. Central Bank of India and another reported (2020 (5) Mh. L.J. 502.*

11. Per contra, Mr. Mahesh Deshmukh, learned advocate for respondent No.7 supports impugned order. He would submit that plaint would show that claim in suit is for partition of three independent properties of joint family, more particularly described in para No.1 of the plaint. The plaintiff claims 1/5th share in the suit properties including share in the compensation amount in respect of acquired land. Defence of respondent No.5 as regards to the previous partition and allotment of

share to plaintiff will have to be tested in trial. The cause of action pleaded in the suit is on the basis of legal notice dated 8.6.2020 served upon defendant No.5, which has been replied with incorrect assertions. The plaint cannot be rejected in part. The trial court has rightly considered relevant aspects and dismissed the application filed under order 7 rule 11.

12. Having considered submissions advanced by learned advocates appearing for respective parties and after going through record tendered into service, apparently, plaintiff and defendant nos. 5 to 8 are legal heirs of Vitthal Mahadu Mahajan, who expired on 22.2.2007. All the three properties described in para. No.1 were owned and purchased by Vitthal Mahajan during his lifetime. The plaintiff raised his claim seeking partition and separate possession and seeking 1/5th share. In addition, plaintiff claims proportionate share in compensation amount received against acquisition of land Gat No. 87.

13. Defendant No.5 filed application at Exhibit 49, under Order 7 Rule 11 of C.P.C. stating that suit is barred by limitation, sans cause of action and based on suppression of material facts. Plaintiff, however, contested the application. The trial court, after considering the law laid down by the Apex Court in the matter of *Dahiben (supra)* as well as judgment of this Court in the case of **Commissioner Vs. Bhalchandra and Shri Xavier D'Souza (supra)** as relied upon by learned advocate for defendants, observed that cause of action is specifically pleaded denying grant of share to the plaintiff. Reference is given to pleading in para. No.14. The trial court has further observed that the issue of limitation being mixed question of fact and law, cannot be considered at this stage of the suit. Trial court further observed that there is nothing to discern

that suit is vexatious or there is suppression of material fact from the court.

14. Mr. Ghatge, learned advocate appearing for defendant Nos. 5 and 6, endeavours to contend that the Land Acquisition Act, 1894 is a complete code in itself. Competent authority has passed award in favour of defendant No.5. Said award has attained finality. As regards acquisition of land from Gat No. 87, although plaintiff was present at the hearing before the Land Acquisition Officer, he never raised objection as regards to the entitlement of defendant No.5 Laxmikant. Therefore, now plaintiff cannot seek declaration against said award which has been passed on 2.7.2009 upholding right of defendant No.5 to receive compensation. According to him, any suit seeking declaration against award passed under Section 11 of the Land Acquisition Act would not be maintainable and barred by law. In support of his contention, he relies upon the observations of this court in the matter of **Comunidade of Bombolim (supra)**.

In that case, the issue of apportionment of compensation between the landlord and tenant was subject-matter. Tenant was not made party to the acquisition proceeding. He filed suit for apportionment of compensation and decree of 50% share. In that contingently, the Court observed that where special statute covers the field, remedy of civil suit would be treated as barred under that Act and apportionment of amount has to be done by Collector while acting as Land Acquisition Officer. However, Court observes that where a party received compensation and other parties having share were not party to the proceedings, they can always enforce the same in Civil Court under Section 9 of C.P.C. Reference is given to the provisions of Section 31(2)

of the Land Acquisition Act.

In present case, plaintiff is seeking relief of partition not only in respect of compensation amount but also share in the remaining land from Gat No. 87 and other two lands. Therefore, even assuming that part of the claim as regards to compensation amount ought to have been raised before competent authority under the Land Acquisition Act, that itself would not constitute a bar for present suit. It is well settled that plaint cannot be partially rejected under Order 7 Rule 11 of CPC. Therefore, without delving into the contentions regarding maintainability of suit, the objection as regards to jurisdiction cannot be entertained at this stage.

15. Second contention advanced on behalf of defendant No.5 is that suit is barred by limitation. Mr. Ghatge contends that illusory cause of action is depicted in the suit. Plaintiff was aware about the award passed in land acquisition proceedings in favour of defendant No.5. If he had any objection regarding declaration of award, he could have raised it before the Land Acquisition Officer or a suit seeking declaration against such award could have been instituted within 3 years. Prima facie, there is no substance in such contention. Plaintiff is seeking decree of partition and separate possession and claims his 1/5th share over the immovable properties and enhanced compensation awarded towards acquisition of land. The defendant is trying to suggest that there was previous partition. Land in Gat No. 86/1 was standing in the name of plaintiff and he has received compensation towards acquisition his share. It is true that award passed by the Land Acquisition Officer depicts that Land Gat No.86 was also subjected to acquisition and certain award was passed by LAO. Plaintiff has not clarified about receipt of compensation under the

said award. According to defendant No.5, it amounts to material suppression. However, from the contents of the plaint, or documents annexed thereto, no positive inference can be drawn that in previous partition, plaintiff was allotted land in gat No. 86 and he received compensation in his name. The question as to previous partition or not bringing all the ancestral properties in common hotch-potch may constitute good defence in suit, but it requires framing of issues and evidence of parties. Such ground cannot be considered for rejection of plaint under order 7 Rule 11.

16. Plaintiff is specifically coming with the case that land Gat No. 87 was part of joint family property purchased in the name of defendant No.5 when he was aged about 16 years. Prima facie, contention of plaintiff that their father Vitthal Mahajan purchased suit property in the name of defendant No.5 cannot be discarded. The theory of defendant as regards to previous partition of ancestral property and his exclusive right to enjoy Gat No. 87 and receive compensation towards acquired land, would also be subject matter of trial. Therefore, on the basis of pleadings in the plaint and documents annexed thereto at this stage, no conclusion can be drawn that suit is barred by limitation or it sans cause of action.

17. In the light of aforesaid observations, even by minute reading of plaint with appended documents and applying the law as espoused by this Court and the Honourable Supreme Court in the judgments relied upon, it is not discernible that litigation is utterly vexatious or an abuse of process of law. The cause of action cannot be said to be illusory. On prima facie reading of plaint and documents, plaint cannot be thrown being unworthy of cognizance, so as to invoke

powers under Order 7 Rule 11 of CPC.

18. In the result, there is no merit in the Civil Revision Application. Same is dismissed.

[S.G. CHAPALGAONKAR, J.]

At this stage, Mr. Ghatge, learned advocate for applicants prays for continuation of interim relief which was in operation till today as the applicants desire to approach the Supreme Court by way of filing a Special Leave Petition.

So as to enable him to to do, interim relief granted earlier to continue for a period of six weeks from today or till the date of filing the Special Leave Petition; whichever is earlier.

[S.G. CHAPALGAONKAR, J.]

grt/-