

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.550 OF 2024

Subhashnagar Co.Operative Housing Society Ltd ...Applicant

vs.

Ramchandra Ganpatrao Jadhav and Others ...Respondents

Mr. Aditya Raktade a/w. Mr. D. Patil, for the Applicant.

CORAM : N. J. JAMADAR, J.

DATE : FEBRUARY 11, 2025

P.C:

1. Heard the learned counsel for the parties.
2. This revision application is directed against an order dated 5th July, 2024 passed by the learned Civil Judge, Kolhapur whereby the application (Exh. 43) preferred by defendant No. 11 came to be rejected.
3. The respondent Nos. 1 to 3 have instituted a suit purportedly for partition and separate possession of the property bearing Block No. 18 situated at Subhash Nagar CHS, Ward B, Kolhapur (the suit property) and further declaration that the Lease Deed dated 1st March, 2019, executed by the society and its vice-chairman, the defendant No. 12, in favour of defendant No.10 is illegal, void and does not bind the share of the plaintiff in the suit property and the consequential reliefs.
4. The plaintiff asserted that the suit property was allotted to

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Ganpatrao Jadhav, the predecessor in title of the plaintiff, and defendant Nos. 1 to 9, in the year 1951. Thus, the plaintiff and defendant Nos. 1 to 9 have undivided interest in the suit property. The defendant Nos. 11 and 12 have unlawfully executed a Lease Deed in favour of defendant No. 10 by canceling the membership of late Kamlabai Jadhav, the wife of late Ganapatrao Jadhav. Hence, the suit for partition and separate possession of the share of the plaintiff and the declaration that the Lease Deed is illegal and void.

5. In the said suit defendant No. 11 filed an application for rejection of the plaint on the ground that since defendant No. 11, is a cooperative society registered under the Maharashtra Societies Act, 1960 (the Act, 1960), no suit could have been instituted without notice as contemplated under section 164 of the Act, 1960.

6. By the impugned order, the learned Civil Judge was persuaded to reject the application, opining that the notice under section 164 of the Act, 1960 was not required to be issued as dispute in the said suit was not touching the business of the society as contemplated under section 91 of the Act, 1960.

7. Being aggrieved, the applicant has invoked the revisional jurisdiction of this Court.

8. Mr. Raktade, the learned counsel for the applicant, would urge that the learned Civil Judge committed a manifest error in

construing the nature of the suit. Emphasis was laid on the fact that in addition to the relief of partition and separate possession, the plaintiffs were seeking declaration that the Lease Deed dated 1st March, 2019 executed in favour of defendant No. 10 by the society was illegal and void and does not bind the interest of the plaintiffs. The said relief squarely falls within the ambit of provision contained in section 91 of the Act, 1960.

9. I have perused the averments in the plaint.

10. The suit is primarily for partition and separate possession of the suit property. The plaintiffs are asserting their proprietary right, title and interest in the suit property. The applicability of the provisions contained in section 164 of the Act, 1960 hinges upon the determination of the question as to whether the subject matter of the suit, is in respect of any act touching the business of the society. In the facts of the case, the allotment of the plot to Ganpatrao Jadhav, the predecessor in title of the plaintiffs and defendant Nos. 1 to 9, by the petitioner society, is in the nature of a historical fact.

11. What the plaintiffs are asserting is a right to have a share in the suit property. The fact that the plaintiffs are also seeking a relief that the Lease Deed executed by defendant Nos. 11 and 12 in favour of defendant No. 10 does not bind the interest of the plaintiffs

does not change the principal character of the suit. In any event, the question as to whether the suit is barred by the provisions contained in section 164 of the Act, 1960 is such that it ought to be raised and determined at the trial. The bar of limitation which was sought to be pressed into service by Mr. Raktade, the learned counsel for the petitioner, is again a mixed question of law and facts.

12. In these circumstances, the learned Civil Judge was justified in declining to reject the plaint by invoking the power under Order VII Rule 11 of the Code. No interference is warranted in exercise of the supervisory jurisdiction.

13. The application thus stands rejected.

(N. J. JAMADAR, J.)