

varsha

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 492 OF 2024
WITH
INTERIM APPLICATION(ST) NO. 26187 OF 2025**

M/s. Avnee and Tejas Associates through its ... Applicant
Partners

vs.

Smt. Vimal Hirachand Rathod and Ors ... Respondents

Mr. Suryajeet P. Chavan for Applicant.

Mr. Mahendra Karnawat for Respondent No.1.

Ms. Anjali S. Kolapkar, for Respondent No.7-PMRDA.

CORAM : GAURI GODSE, J.

DATED : 30th JULY 2025

ORDER:

1. This civil revision application is filed by defendant no. 6, to challenge the dismissal of the application under Order VII Rule 11 of the Civil Procedure Code, 1908('CPC'). The application for rejection of the plaint was filed on the ground that the suit is barred by the principle of res judicata and there is no meaningful cause of action to maintain the suit.

2. Learned counsel for the applicant submits that the plaintiff's claim is based on a judgment which is under challenge in a second

appeal pending in this court. The present plaintiff had filed a counter claim seeking a declaration of title. He therefore submits that the plaintiff has no clear title to file the present suit seeking relief to protect possession and other relief of injunction prayed in the present suit. He therefore submits that in the absence of any clear title, the cause of action pleaded by the plaintiff would not be a meaningful cause of action to maintain the suit. He further submits that the issue regarding the plaintiff's title is an issue in the second appeal, pending in this court. Hence, the suit would also be barred by the principle of res judicata.

3. To support his submissions, learned counsel for the applicant refers to the pleadings in the plaint regarding the pendency of the second appeal. He thus, submits that the plaint deserves to be rejected at the threshold.

4. Learned counsel for respondent-plaintiff submits that the issue regarding bar of principle of res judicata cannot be considered as a ground for rejection of plaint at the stage of Order VII Rule 11 of the CPC, as it involves the question of facts which needs to be decided in full fledged trial. So far as the objection, of no meaningful cause of action is concerned, learned counsel for respondent no.1 relies upon the pleadings in paragraph no. 17 of

the plaint. He submits that the pendency of the second appeal is disclosed by the plaintiff in the suit and accordingly a specific cause of action is pleaded for seeking relief as claimed in the suit. He therefore submits that none of the grounds as contemplated under Order VII Rule 11 of the CPC are applicable for the rejection of the plaint at the threshold.

5. Learned counsel for the respondent no.1-plaintiff submits that the district court has already granted the declaration of title in favour of the plaintiff which is the subject matter of challenge in the second appeal. He therefore submits that only due to the pendency of the second appeal, it cannot be concluded at this stage that the present plaintiff would not have cause of action to file the suit on the ground that she has no title. Learned counsel for respondent no.1 points out the relevant pleadings from paragraph no. 5 onwards, regarding plaintiff's title and pending litigation as explained by the plaintiff. He thus, submits that based on the substantial pleadings regarding plaintiff's title and the cause of action pleaded in paragraph no. 17 of the plaint, there is no substance in the objections raised on behalf of the present applicant that there is no meaningful cause of action.

6. I have carefully perused the pleadings. Learned counsel for respondent no. 1 is right in submitting that the pleadings regarding

the litigation and the present plaintiff's claim over title of the property are explained in the plaint. The proceedings before the revenue authority is also explained. Considering the dates and events as explained from paragraph no. 5 onwards, the plaintiff has pleaded cause of action in paragraph no. 17. It is the plaintiff's contention that the cause of action for filing of suit arose in February 2019 when the attempt was made to erect tin sheets on the plaintiff's property. The particulars regarding issuance of public notice before filing of the suit is explained as part of the cause of action. Thus, considering the pleadings in the plaint and the disclosure of the pending litigation including the second appeal, in this court, the plaintiff would be entitled to lead evidence to support the contentions in the plaint. So far as the present applicant, i.e. defendant no.6 is concerned, is not a party to the pending second appeal. The dispute in the pending second appeal is between the plaintiff and other parties who claim title over the suit property. Thus, considering the specific pleadings in the plaint and the material particulars pleaded for seeking relief of declaration and removal of encroachment and prayer for injunction, the same would warrant a trial and the plaintiff would be entitled to lead evidence.

7. It is a well-established legal principle that the plaint cannot be rejected at the threshold in view of the bar of principle of res

judicata. The bar of principle of res judicata is a mixed question of law and facts which can be decided only after a full fledged trial. Hence, the plaint in the present case cannot be rejected at the threshold.

8. Learned counsel for the applicant submits that in the pending second appeal before this court, the order was passed on 1st March 2019 directing the parties to maintain status quo. He therefore submits that the cause of action in the present suit claimed to have arose on February 2019 is fabricated cause of action only to circumvent the order dated 1st March 2019 directing the parties to maintain status quo. He submits that the present suit is affirmed on 12th December 2019. Hence, it is clear that only because this court had directed the parties to maintain status quo on 1st March 2019, a false and fabricated cause of action as pleaded is shown to have arose in February 2019.

9. I do not find any substance in the arguments raised on behalf of the applicant regarding fabricated or false cause of action. This court vide order dated 1st March 2019 has directed the parties of the second appeal to maintain status quo. The cause of action in the present case is pleaded regarding defendant no.6, i.e. the present applicant trying to erect tin sheets in the suit property. Hence, the

pendency of the second appeal or the impugned order directing the parties to the second appeal to maintain status quo cannot be connected to the cause of action pleaded in the suit against defendant no.6.

10. The civil revision application is therefore dismissed.

(GAURI GODSE, J.)