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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.557 OF 2007
IN
NOTICE OF MOTION NO.3907 OF 2005
IN
SUIT NO.3325 OF 2005

1. Rohit s/o Pramod Chavan
2. Mitesh s/o Pramod Chavan
both minors through their natural
guardian Neeta Pramod Chavan
Indian Inhabitant, residing at Flat
No.458, Building No.13, Rohini Co-op.
Hsg. Soc. ltd., Tilak Nagar, Chembur,
Mumbai 400089. ... Appellants

Versus

1. Pramod Jayawant Chavan
Kurla Kamgar Nagar, Mumbai

2. (a) Mrs Sheetal Sudhakar Chavan
(b) Rekhi Sudhakar Chavan
(c) Ashwin Sudhakar Chavan
All Indian Inhabitant Residing at
Rohini CHS Ltd. Vashi, Navi Mumbai
400706

3. Tukaram Jaywant Chavan
Adult, Indian Inhabitant,
R/at A/15, Sperry Villa, Govind Nagar,
Malad, Mumbai 400097

4. Mrs Usha Shashikant Hadkar
Adult, Indian Inhabitant
R/at Pawawala Chawl, Dhanukar Wadi,
Kandivali, Mumbai 400067.

5. Mrs Sanjivani Janardan Upare
Adult, Indian Inhabitant,
R/at Room No.112, Wani Chawl,
Parel, Mumbai 400012.

6. Mrs Smita Sanjay Daundkar,
Adult, Indian Inhabitant,
R/at 13/467, Tilak Nagar, Chembur,
Mumbai 400089.

7. Mrs. Chhaya Digambar Naik
Adult, Indian Inhabitant,
R/at 113/4748, Nehru Nagar, Kurla,
Mumbai 400024.

8. Dyandeep Co-Op Credit Society
Limited
Having its registered office at
Guru Prasad 'A', Arunodya Nagar,
Mulund (E), Mumbai 400081

9. The Hindustan Co-op Bank Ltd.,
having its office at Plot No.11,
Sector - VIII, Near MGM Hospital,
Kalamboli, New Mumbai-410218.

10. Yeshomandir Sahakari Pathpedi
Maryadit, having office at
307, Mahavir Apartments, Pantnagar,
Ghatkopar, Mumbai-400076.

11. The Mumbai District Central Co.Op.
Bank Ltd.
having its office at Ghatkopar (E),
Mumbai.

12. The Mahanagar Co-op Hsg. Ltd.
having its registered office at
Hiramani Super Market,
Dr. B.A.Road, Lalbaug, Mumbai 400012

13. Vishal Junnar Sahakari Patpedhi,
Maryadit, having its registered
office at B-3, Sussax Industrial
Estate, D.K.Cross road,
Byculla East, Mumbai.

14. Suresh Bhanwarlal Jain,
Adult, Indian Inhabitant,
R/at 35, M.G.Road, Near Railway
Crossing, Chembur, Mumbai 400089.

Respondents

15. Canara Bank, having its Branch ...
office at Kurla East Mumbai.

16. The Rohini Co-op. Hsg. Soc. Ltd.,
having its registered office at
Tilaknagar, Chembur, Mumbai-400089.

Mr A J Almeida a/w Mr Suraj Ghogare, for the Appellants.
Mr Vishal Ghosalkar for the Respondent No.1.

**CORAM : M.S. Sonak &
Jitendra Jain, JJ.**

RESERVED ON : 13 June 2025
PRONOUNCED ON : 23 June 2025

JUDGMENT (Per Jitendra Jain, J.):

1. This appeal is filed challenging an order dated 28 June 2007 whereby Suit No.3325 of 2005 was dismissed by the learned Single Judge on the ground that filing of such suit amounts to abusing the process of law.
2. The appellants were the original plaintiffs in Suit No.3325 of 2005. The said suit was filed by the guardian

since the original plaintiffs were minors. The suit was filed for declaration that the plaintiffs be declared as co-owners of the suit property to the extent of their shares along with defendant nos.1 to 7 and further declared that the original defendants nos.8 to 15 are not entitled to attach or sale the suit property in the proceedings arising out of loan borrowed by the original defendant no.1.

3. After the suit was instituted, the original plaintiffs filed a notice of motion seeking interim relief. The said notice of motion was numbered as '3907 of 2005.' At the hearing of the said motion, the learned Single Judge observed that the plaintiffs do not have any right, title or interest in the suit property and the suit has been filed only to delay the recovery of loan taken by defendant no.1 thereby abusing the process of law and, therefore, dismissed the suit itself.

4. Mr. Almeida, learned counsel for the appellants, submitted that in the suit, a specific averment has been made that the suit property is a HUF property in the hands of the plaintiffs and defendant nos.1 to 7 and, therefore, they have a locus to file the said suit. In the plaint, it is specifically averred that defendant no.1 in collusion with the officers of defendant nos.8 to 15 have fabricated various documents for obtaining the loan and, therefore, the loan transactions are not legal transactions which can be enforced in law. There is also a specific averment in the plaint that without original deposit of original title deeds, no legal mortgage could have been created by defendant no.1. It was on the basis of this

averment that the learned counsel for the appellants submitted that the observation made in the impugned order that original plaintiffs have no right, title or interest is erroneous. He further submitted that none of these averments have been considered in the impugned order. He submitted that the learned Single Judge was not justified in dismissing the suit at the threshold while hearing the notice of motion on the ground that the appellants have no right, title or interest in the property. He submitted that the issue of right, title and interest of the original plaintiffs and the act of fraud averred in the plaint would be a subject matter of trial by leading evidence. He, therefore, submitted that the impugned order be set aside.

5. Mr. Ghosalkar appearing for respondent no.1 submitted that only an averment in the plaint is not enough for asserting the right, title or interest in the property. Similarly, he submitted that merely making an allegation of fraud in the plaint would not entitle the plaintiffs to challenge the recovery proceedings. He submitted that no *prima facie* case was made out by the original plaintiffs and, therefore, the learned Single Judge was justified in dismissing the suit on the ground of abuse of process of law. The learned advocate for respondent no.1 relied upon the decision of the Supreme Court in the case of ***Uttam Vs Saubhag Singh and Ors.***¹. He, therefore, prayed for dismissal of the appeal.

¹ (2016) 4 SCC 68

6. We have heard learned counsel for the appellants and the respondents. The impugned order appears to have been passed in exercise of inherent jurisdiction under Section 151 of the Code of Civil Procedure, 1908 (CPC). Admittedly, none of the respondents had filed any application under Order VII Rule 11 of the CPC.

7. On a conjoint reading of Order VII Rule 11 and Section 151 of the CPC, when dismissing a suit on the grounds of abuse of process of law, the parameters specified in Order VII Rule 11 should be considered prior to any dismissal on such grounds. In a given case, where the abuse of the process is clear, the Court undoubtedly possesses the power and jurisdiction to dismiss the suit. In the impugned order, none of these parameters have been considered by the learned Single Judge.

8. The learned Single Judge has also not considered the averments made in the plaint, wherein it is specifically asserted that the suit property is a Hindu Undivided Family (HUF). Property of which the plaintiffs are co-owners. Similarly, there is no consideration of the averment made in the plaint that the documents are forged by the defendants for the purpose of claiming a mortgage of the property.

9. In our view, the averments made in the plaint should have been considered *prima facie* before concluding that the suit is filed for misusing the process of law. We do not find the said consideration in the impugned order. The suit also states

the circumstances under which defendant no.1, father of the plaintiffs and the mother of the plaintiffs are living separately. Even this factor would be relevant for considering whether the suit is filed to delay the recovery proceedings. We do not find consideration of even this averment in the impugned order.

10. In our view, at the threshold, the learned Single Judge could not have dismissed the suit on the ground of abuse of process of law since the issue raised in the plaint that the property is a HUF property, the mortgage is fraudulent etc., are the issues which are prima facie required to be considered. This might require evidence or at least deeper consideration and not a summary treatment. These issues could not have been ignored at the threshold stage when an application for interim prayers was being considered. Therefore, in our view, the learned Single Judge was not justified in dismissing the suit on the grounds mentioned in the impugned order.

11. The decision in the case of *Uttam (supra)* relied upon by the counsel for respondent no.1, cannot be applied at a stage where the factual disputes are yet to be resolved. Even in the case before the Supreme Court, it was only after the trial was over and the evidence had been led that the finding was made about whether the property constituted joint family property or not. On the contrary, this decision suggests that all contentious issues must be resolved before the suit can be dismissed. Here, there is no determination of the

controversial issues with respect to the property belonging to the HUF and fraudulent acts for mortgaging the property etc. Therefore, in our view, the decision relied upon by the learned counsel for respondent no.1 cannot be of any assistance.

12. We, therefore, set aside the impugned order, dated 28 June 2007, and restore Suit No. 3325 of 2005 and Notice of Motion No. 3907 of 2005 to the file of the learned Single Judge for adjudication afresh.

13. Appeal is allowed on the above terms, without any order as to costs.

14. The Suit No.3325 of 2005 is restored to the file of the learned single judge for disposal in accordance with the law.

(Jitendra Jain, J)

(M.S. Sonak, J)