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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 585 OF 2013

Harmony Enterprises, through its Partners

A. Devji K.Patel and others

.. Applicants

Vs.

Maruti Baliram Patil and others

.. Respondents

Mr.Shriniwas S.Patwardhan, Advocate for the Applicants.

Mr.Sudhir V. Sadavarte, Advocate for Respondent No.1.

CORAM : R. G. KETKAR, J.

DATE : 05th AUGUST, 2015

P.C. :

. Heard Mr.Shriniwas S.Patwardhan, learned Counsel for the applicants and Mr.Sudhir V. Sadavarte, learned Counsel for respondent No.1 at length.

2. Mr.Patwardhan orally applies for deleting the respondents No.2A to 2D from this Application as no relief is claimed against them and are formal parties. Leave to delete respondents No.2A to 2D is granted. Amendment shall be carried out forthwith. Office remark shows that respondents No. 3A to 3D are duly served. By order dated 18/10/2013, notice for final disposal at the stage of admission was issued. Rule. Mr.Sadavarte waives service for respondent No.1. None appears for respondents No.3A to 3D despite service. At the request and by consent of the parties, rule is made

returnable forthwith the Application is taken up for final hearing.

3. By this Application under Section 115 of the Code of Civil Procedure, (for short 'C.P.C.'), original defendant No.3 has challenged the judgment and order dated 20/04/2013 passed by the learned 3rd Joint Civil Judge, Junior Division, Panvel below Exhibit 56 in Regular Civil Suit No. 594 of 2012. By order dated 16/02/2013 below Exhibit 36, the learned trial Judge framed following preliminary issue.

“Whether this Court has pecuniary jurisdiction to try, entertain and dispose of the present Suit ?”

4. In support of this Application, Mr.Patwardhan submitted that respondent No.1, hereinafter referred to as plaintiff, has challenged the tripartite agreement dated 15/04/2010 entered into by and between plaintiff, defendant No.1 and City and Industrial Development Corporation of Maharashtra (for short 'CIDCO'). On 14/12/2011, tripartite agreement was entered into by and between defendant No.1, defendant No.3 and CIDCO. The plaintiff has challenged tripartite agreements dated 15/04/2010 and 14/12/2011. Mr. Patwardhan submitted that defendant No.3 filed application Exhibit 56 on 15/12/2012 under Section 9-A of C.P.C. In paragraph 3, it is asserted that in the receipt attached to the tripartite agreement dated 15/04/2010, the market value of the suit property as per ready reckoner is shown as Rs.24,14,000/-. On that, stamp

duty of Rs.1,20,750/- was paid. He further submitted that tripartite agreement dated 15/04/2010 recites that original licensee (plaintiff herein) requested CIDCO to grant permission to sell, transfer and assign his rights & interest in respect of Plot No. 24 admeasuring 1049.40 sq.meters situate at Taloja Pachnand, Sector 16 (for short 'suit property') and also grant a lease to new licensee (defendant No.1) in accordance with terms and conditions. The CIDCO gave permission to plaintiff and he agreed to the terms set out in that agreement.

5. Mr. Patwardhan submitted that as the plaintiff has prayed for cancellation of tripartite agreements dated 15/04/2010 and 14/12/2011, he has to value the Suit as per Sections 6(iv)(ha) and 6(v) of the Maharashtra Court Fees Act (for short 'Act') and has to pay court fee on that basis. If the valuation is made under Sections 6(iv)(ha) and 6(v), it will exceed pecuniary jurisdiction of the Court of Civil Judge, Junior Division, Panvel which is Rs. 5 lacks. The Court will have no pecuniary jurisdiction to entertain and try the Suit. He, therefore, submitted that the learned trial Judge committed error in rejecting the application.

6. On the other hand Mr.Sadavarte supported the impugned order. He submitted that the plaintiff had paid premium of Rs.17,325/- to the CIDCO as recorded in the tripartite agreement dated 15/04/2010. In terms of explanation (i) to Article 36 of the

Maharashtra Stamp Act, consideration in the form of premium has to be treated as a consideration having been passed on between the parties. In short, he submitted that in the tripartite agreement, plaintiff had paid premium of Rs.17,325/- to the CIDCO and that is to be treated as consideration of the tripartite agreement dated 15/04/2010. Accordingly, plaintiff has valued the Suit as per Section 6(iv)(ha) of the Act. He submitted that in paragraph 7 of the impugned order, the learned trial Judge has observed that merely plaintiff had paid stamp duty and registration fee on the market value of the suit plot in the tripartite agreements that does not change the nature of the agreement into sale or contract of sale. The learned trial Judge, therefore, held that it is not necessary for the plaintiff to value the Suit as per Sections 6(iv)(ha) or 6(v) of the Act and to pay court fee on the market value of the suit plot. The learned trial Judge further observed that plaintiff has rightly valued the Suit by taking into consideration the lease premium in respect of the said plot for the total value of Rs.44,135/- and accordingly valued the Suit. It does not exceed pecuniary limit of the Court of Civil Judge, Junior Division, Panvel.

7. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that the lands owned by the plaintiffs were acquired by the CIDCO. Under 12.5% scheme, CIDCO

had paid compensation partly in terms of money and partly by allotting plot at 12.5% of the land acquired on lease basis. In terms of that policy, CIDCO agreed to allot suit property on a lease basis for a period of 60 years to the plaintiff. Perusal of the tripartite agreement dated 15/04/2010 shows that plaintiff sought permission of CIDCO to sell and transfer his interest in respect of the suit property in favour of defendant No.1. Accordingly, Corporation gave permission and tripartite agreement was entered into by and between plaintiff and defendant No.1 and CIDCO on 15/04/2010. Prima facie, the tripartite agreement dated 15/04/2010 records 2 transactions namely i) permission to plaintiff to sell his interest in the suit property as also ii) granting of lease in favour of defendant No.1 for a period of 60 years. The learned trial Judge has considered that the plaintiff had paid premium of Rs.17,325/- and accordingly, has valued the Suit. In my opinion, the learned trial Judge did not consider the transaction by which plaintiff has sold his interest in the suit property in favour of the defendant No.1 subject to permission of CIDCO. Mr.Sadavarte submitted that no document was executed between plaintiff and defendant No.1. It is, therefore, necessary to hold enquiry under Section 8 of the Act for arriving at the consideration received by plaintiff from defendant No.1. It is also necessary to permit the parties to lead evidence as the compensation paid is partly in terms of money and partly in terms of allotment of

plot on lease basis under 12.5% scheme for a period of 60 years. As this aspect is not considered by the learned trial Judge, it is necessary to set aside the impugned order and restore application Exhibit 56. Hence, following order.

- i) The impugned order dated 20/04/2013 passed by the learned 3rd Joint Civil Judge, Junior Division, Panvel below Exhibit 56 in Regular Civil Suit No. 594 of 2012 is quashed and set aside and application Exhibit 56 is restored to the file of the trial Court.
- ii) The learned trial Judge will hold enquiry as contemplated by Section 8 of the Act and permit the parties to lead evidence in support of their respective contentions.
- iii) The parties agree that they will appear before the trial Court on 24/08/2015 and that for that purpose, fresh notice need not be issued to them. The learned trial Judge is requested to complete enquiry and pass necessary order within 3 months from the date of the appearance of the parties.
- iv) In the enquiry, the learned trial Judge will investigate and ascertain proper valuation and pass appropriate order. All the contentions in that regard are expressly kept open.

8. Rule is made absolute with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)