

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL REVISION APPLICATION NO. 605 OF 2015
WITH
CIVIL APPLICATION NO.508 OF 2015 IN CRA/605/2015**

Shri Salim Mahammad Khatik
(Kureshi) and Ors.

..Applicants

Vs

Smt. Raiza Mukhtar Taade and
ors

.. Respondents

Mr. Niketan Nakhawa, Advocate for Applicants.

Mr. A.P. SteenSou i/b Amul Jawale, Advocate for Respondents
no.1 to 4.

**CORAM : R.G.KETKAR,J.
DATE : 10/12/2015**

PC:

1. Heard Mr. Niketan Nakhawa, learned counsel for the applicants and Mr. SteenSou, learned counsel for respondents no.1 to 4. Mr. Nakhawa orally seeks permission to delete respondent no.5 from this Civil Revision Application as respondent no.5 is not a contesting respondent. On the motion made by Mr. Nakhawa, leave to delete respondent no.5 is granted.

2. Rule. Mr.SteenSou waives service for the respondents. At the request and by consent of the parties, Rule is made returnable forthwith and Application is taken up for final hearing

3. By this Application under Section 115 of the Code of Civil

Procedure, 1908, (for short, 'C.P.C.'), original defendants no.1 to 6 have challenged the judgment and order dated 23.7.2015 passed by the learned Civil Judge, Jr. Dn., Uran below Exhibits 23 and 28 in Regular Civil Suit No.98 of 2014. By that order, the learned trial Judge rejected Applications-Exhibits 23 and 28 made by defendants no.1 to 5 and defendant no.6 respectively under Section 9-A of C.P.C. raising issue of pecuniary jurisdiction.

4. Mr. Nakhawa submitted that respondents no.1 to 5, hereinafter referred to as 'plaintiffs', have instituted suit, inter alia, praying for: (a) declaration that the suit properties are acquired by the plaintiff and defendants no. 1 to 5 and 7 brought inheritance ; (b) for declaration that the plaintiffs have rights and share in the suit properties; (c) for declaration that the development agreement dated 29.3.2014 entered into by and between defendants no.1 to 5 and defendant no.6 is illegal and not binding on them; (d) for perpetual injunction restraining defendant no.6 from proceedings with construction and creating third party interest to any other persons.

5. Mr. Nakhawa submitted that prayer clause (b) is clearly referable to section 6(iv),(d) of the Maharashtra Court Fees Act, (for short, 'Act'). He also relied upon the decision of this Court in the case of Dr. G. V. Iyengar Vs. A.R.Sampathkumar, 2008 (3) All M. R. 352 and in particular paragraphs 5, 8 to 10 thereof.

6. He further submitted that prayer clause (c) is covered by Section 6(vii) of the Act and prayer clause (d) falls in section 6(iv) (ha) of the Act. He further submitted that defendants no.1 to 5 have also led evidence in support of their contention that if proper valuation is made, it exceeds pecuniary jurisdiction of the Court. The plaintiffs, however, did not lead any evidence. The learned trial Judge did not deal with evidence adduced by defendants.

7. On the other hand, Mr. SteenSou supported the impugned order. He submitted that prayer clause (b) does not fall in section 6(iv)(d) and falls in section 6 (iv)(j). As far as prayer clause (b) is concerned, the plaintiffs have also not sought possession of the properties and, therefore, section 6(iv)(d) is not applicable as also the decision in the case of Dr. G.V. Iyengar (supra) is not applicable. As far as prayer clause (c) is concerned, he submitted that Section 6(vii) is not applicable as the valuation is to be made according to the value of share in respect of which suit is instituted. Unless the share is determined by the Court, it will not be possible at this stage to value the share. He, therefore, submitted that Section 6(vii) is not applicable, qua prayer clause (c). As far as prayer clause (d) is concerned, the plaintiffs have sought declaration that the development agreement dated 29.3.2014 executed between defendants no. 1

to 5 and 6 is not binding on the plaintiffs. Section 6(iv)(ha) of the Act will not be applicable. In support of this submission, he relied upon the decision of the Apex Court in the case of *Suharid Singh Vs. Randhir Singh*, AIR 2010 SC 2807.

8. 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 defendants no.1 to 5 have led evidence by examining Sagar Mhatre at Exhibit 33. The said witness has also produced valuation report. The learned trial Judge has, however, not discussed the evidence of witness Sagar Mhatre as also the valuation report submitted by him. That part, in paragraph 9, the learned trial Judge distinguished the decision of *Dr.G.V.Iyengar (supra)* only on the ground that the plaintiffs have not claimed declaration of their status as heirs and, therefore, the said decision is not applicable. In my opinion, the learned trial Judge ought to have discussed the evidence adduced by defendants 1 to 5. Having regard to paragraphs 5, 8 to 10 of *Dr.G.V.Iyengar case (supra)*, Prima facie, I am of the view that the learned trial Judge was not justified in distinguishing that judgment only on the ground that the plaintiffs have not claimed delectation that they are heirs. In view thereof, the impugned order cannot be sustained and is liable to be set aside. As the learned trial Judge has not discussed the evidence as also has not

properly distinguished the decision of this Court in the case of Dr.G.V.Iyengar (supra), the matter is required to be remitted to the trial Court for deciding the applications afresh. In case, the plaintiffs intend to lead evidence for deciding preliminary issue under section 9-A, they will be at liberty to do so, if they so desire. Learned counsel for the parties state that the next date of hearing before the trial Court is 18.12.2015.

9. In view thereof, in my opinion, following order will meet the ends of justice.

(i) The impugned order dated 23.7.2015 is quashed and set aside.

(ii) Applications-Exhibits 23 and 28 are restored to the file of the trial Court. The plaintiffs are at liberty to lead evidence for deciding preliminary issue under section 9-A, if they so desire. Learned trial Judge will consider Applications-Exhibits 23 and 28 in the light of the evidence adduced and deal with that evidence and pass appropriate order in accordance with law.

(iii) Learned trial Judge is requested to decide the Applications as early as possible and preferably within three months from the date of appearance of the parties.

(iv) Parties shall appear before trial Court on 18.12.2015. All contentions of the parties on merits are expressly kept open.

(v) Rule is made absolute in the aforesaid terms with no order

as to costs.

(vi) In view of disposal of Civil Revision Application, Civil Application No. 508 OF 2015 for stay does not survive and the same is disposed of.

(vii) Parties and trial Court shall act on the authenticated copy of this order. Issuance of certified copy is expedited.

(R.G.KETKAR, J.)