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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 222 OF 2014

Shri Anil Bansilal Sarda ... Applicant

Vs.

Ramesh Bansilal Sarda and another .. Respondents

Mr.Kirit Hakani i/b Mr.Dhindikar, Advocate for the Applicant.
Mr.P.D.Dalvi, Advocate for Respondent No.1.

ALONG WITH

WRIT PETITION NO. 11948 OF 2015

Ramesh Bansilal Sarda .. Petitioner

Vs.

Anil Bansilal Sarda and another .. Respondents

Mr.P.D.Dalvi, Advocate for the Petitioner.
Mr.Kirit Hakani i/b Mr.Dhindikar, Advocate for Respondent No.1.

CORAM : R.G.KETKAR, J.

DATE : 08th DECEMBER, 2015

P.C. :

. Heard Mr.Kirit Hakani, learned Counsel for the applicant (defendant No.2) in Civil Revision Application No. 222 of 2014 and for respondent No.1 in Writ Petition No. 11948 of 2015 and Mr.P.D.Dalvi, learned Counsel for respondent No.1- original plaintiff in Civil Revision Application No. 222 of 2014 and for petitioner in Writ Petition No. 11948 of 2015 at length.

2. Civil Revision Application No. 222 of 2014 is instituted

by defendant No.2 challenging the judgment and order dated 07/02/2014 passed by the learned Civil Judge, Senior Division, Ulhasnagar below Exhibit 10 in Regular Civil Suit No. 312 of 2010. By that order, the learned trial Judge rejected the application taken out by defendants No.1 & 2 under Section 9-A of the Code of Civil Procedure, 1908 (for short 'C.P.C.') and directed the plaintiff to value the suit property for relief of partition.

3. Defendants No. 1 & 2 filed application at Exhibit 10 for framing preliminary issue about maintainability of the Suit on the ground that the valuation made by the plaintiff in respect of the prayer clauses (b), (c), (d) is improper and if proper valuation is made, the valuation will exceed pecuniary jurisdiction of the trial Court.

4. Mr.Hakani fairly stated that in the application at Exhibit 10, no objection as regards valuation made in respect of prayer clause (a) of the Suit was raised. Upon taking instructions from the instructing Advocate – Mr.Dattaram Dhindikar and applicant who are present in the Court, he seeks permission to withdraw the application at Exhibit 10 with liberty to file appropriate application. Mr.Dalvi submits that if such liberty is given, all the contentions of the plaintiff may be kept open.

5. In view thereof, by consent of the parties, Application is disposed of as under :

i) Defendants No. 1 & 2 are permitted to withdraw the application at Exhibit 10 with liberty to file a fresh application. In view of withdrawal of the application Exhibit 10, the impugned order is dissolved.

ii) Defendants No. 1 & 2 shall take out appropriate application within 2 week from today. The plaintiff shall file reply within 2 weeks from the receipt of the application.

iii) Defendants No.1 & 2 state that they will examine only one witness in support of the application. In view thereof, the learned trial Judge is requested to dispose of the application as expeditiously as possible and preferably within a period of 6 months from today.

iv) All the contentions of the parties on merits are expressly kept open.

6. Rule is made absolute in the aforesaid terms with no order as to costs.

7. In view of the order passed in Civil Revision Application No. 222 of 2014, nothing survives in Writ Petition No.11948 of 2015 and the same is disposed of accordingly.

(R.G.KETKAR, J.)